MASSACHUSETTS
LEMON LAW ARBITRATION PROGRAM

1986 REPORT

Commonwealth of Massachusetts

Executive Office of Consumer Affairs
and Business Regulation

Michael S. Dukakis
Governor

Paula W. Gold
Secretary

MARCH 1987

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Paula W. Gold, Secretary

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I. INTRODUCTION

° Every time it rained, this North Dartmouth consumer's car was soaked. Mr. M left his 1985 Mustang at the dealer for more than 33 days while attempts were made to repair these water leaks. The consumer was fed up, and he filed for state-run arbitration. Ford claimed that this defect did not substantially impair the vehicle. The arbitrator ruled that the market value of the car was substantially impaired and ordered Ford to pay the consumer $12,683.60.

° After bringing her 1985 Renault Encore back to the dealer five times for leaking transmission fluid, Ms. M of Braintree decided enough is enough. Two weeks after she gave AMC its Lemon Law final repair opportunity, the transmission was leaking again. At her arbitration hearing, the manufacturer argued that the defect was caused by the consumer's negligence. The arbitrator ruled that the defect was substantial and that it was not caused by her negligence. The arbitrator ordered AMC to take the vehicle back and to pay the consumer $6,435.73.

° When Mr. and Mrs. C of Medford brought home their 1986 Chrysler Fifth Avenue, they noticed that the paint was cracking in several places. They brought the car back to the dealer hoping to exchange it. The dealer refused to exchange it but offered to repair the paint. The dealer had the car for 16 business

days while they tried to fix the cracking paint. Chrysler did not try to fix the car. At the hearing, the manufacturer argued that the cracking paint was not a substantial defect. However, the arbitrator ruled that this substantially impaired the market value of the car and ordered Chrysler to take the vehicle back and pay the couple $17,217.46.

° Ms. S from Whitman alleged substantial defects with her 1986 Yugo GV. The car was out of service for repairs over 46 days for problems including engine replacement, oil leaks and a strong odor from the engine. At her hearing, the manufacturer argued that an inexpensive vehicle will not perform like a full-priced car. The arbitrator ruled that her car qualified for a refund and ordered a $4,312.31 award to the consumer.

° After her 1986 Chevrolet Corvette was towed to the dealer three times for failing to start, Ms. B from Boxford requested arbitration. Chevrolet argued that the failures in starting were caused by a problem in the computer system and that the dealer's mechanics did not have sufficient knowledge of the sophisticated system to diagnose the problem correctly. The arbitrator decided in favor of the consumer, who was issued a check for $27,801.18.

Two years ago, these consumers with Lemon Law complaints faced costly and time consuming court battles against manufacturers. In 1986, the first year of the Massachusetts Lemon Law Arbitration

Program, consumers received over $1.3 million in refunds and replacement vehicles through an inexpensive and quick dispute resolution process.

Last year, the Executive Office of Consumer Affairs and Business Regulation (EOCABR) under Secretary Paula W. Gold developed and implemented a state-run arbitration program for consumers with seriously defective new cars. The new Lemon Law Arbitration Program handled 605 requests for arbitration in 1986. Two hundred and sixty-eight cases were heard with 66 percent of decisions favoring consumers. Another 133 cases were withdrawn as the result of settlements with manufacturers, eventual repair of defects and other reasons. The purpose of this report is to examine the performance of the Lemon Law Arbitration Program under the current law.

II. BACKGROUND: THE LAW

The Massachusetts Lemon Law was originally enacted in September, 1983 and went into effect on January 1, 1984. The purpose of the law is to provide protection for new car buyers whose vehicles are seriously defective. The intent is to give such protection through two means: (1) defining exactly what constitutes a "lemon" and requiring refunds or replacements when that definition is met; and (2) providing a speedy, inexpensive and fair way to resolve lemon disputes--through arbitration. The original Lemon Law had a voluntary, manufacturer-sponsored arbitration system which never operated as envisioned. When this voluntary system did not work, the Legislature amended the law in late 1985 to establish a mandatory, state-run arbitration program. The Executive Office of

Consumer Affairs and Business Regulation, one of the Secretariats within Governor Michael S. Dukakis' Cabinet, was given responsibility for implementing the new law.

III. ELEMENTS OF THE LAW

A. Definition of a "lemon"

Consumers who have purchased new vehicles since January 1, 1984 are entitled to a refund or replacement if the vehicle does not conform to express or implied warranties and cannot be brought into compliance by the manufacturer, its agent or authorized dealer after a reasonable number of attempts. The Lemon Law only covers nonconformities that substantially impair use, market value or safety. A "reasonable number" of attempts is defined as three or more repair attempts for the same nonconformity or at least 15 business days out of service for repairs of nonconformities within the term of protection (the first year or 15,000 miles, whichever comes first). The law gives the manufacturer one additional opportunity to repair the defect(s). The additional opportunity of no more than seven business days begins when the manufacturer knows or should have known that a reasonable number of attempts has been met or exceeded.

If a vehicle meets these standards and the nonconformity continues to exist after the manufacturer's final opportunity, the consumer is entitled to a refund or a replacement vehicle. (See Chart I for steps in getting relief under the Lemon Law.)

STEPS TO RESOLVING A "LEMON LAW" DISPUTE

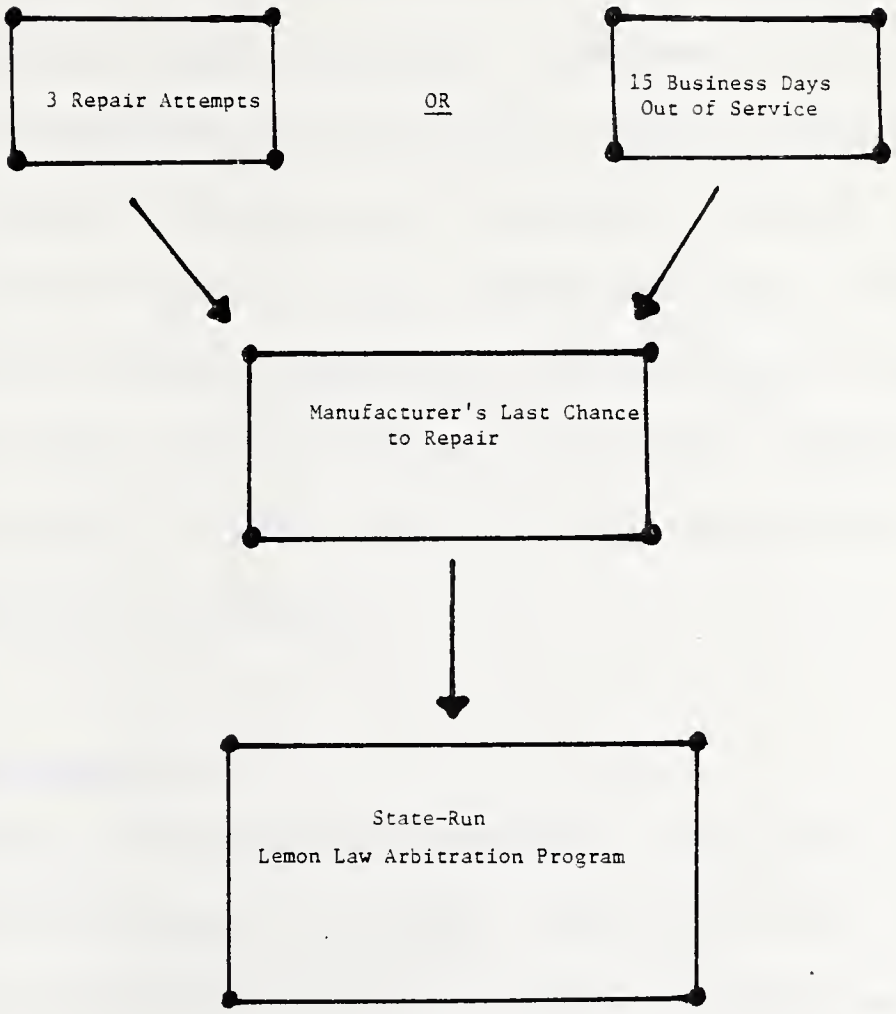


CHART I

B. **Arbitration**

1. **The Old Law**

The drafters of the law have always envisioned that "lemon" disputes could be settled in a quick, inexpensive manner without litigation, through arbitration. Originally, under the first law's voluntary system, manufacturers could require consumers to go to arbitration before filing a court claim if an arbitration panel set up by the manufacturer met standards outlined in the Lemon Law. Those standards included requirements that half the members of any panel be named by the Secretary of Consumer Affairs and Business

Regulation and that decisions be binding on the manufacturer, but not on the consumer. No manufacturer in Massachusetts set up a panel that met Lemon Law standards. Consumers who believed they had "lemons" had no means to enforce their rights other than to file a court claim--a time consuming and expensive option.

Lack of arbitration was the single largest problem in implementing the original Lemon Law. The intent to provide an alternative to court action was not realized, and for this reason, the law was amended in 1985, establishing the current state-run Lemon Law Arbitration Program.

2. The Current Law

The amendment providing for mandatory, state-run arbitration became effective December 31, 1985, and arbitration regulations promulgated by the EOCABR pursuant to the statute went into effect on April 17, 1986. Full operation of Massachusetts' Lemon Law Arbitration Program began on April 23, 1986.

The amended statute requires all manufacturers to participate in state-run arbitration when the Lemon Law Arbitration Program (LLAP) receives a consumer's request for a hearing within 18 months after taking delivery of the vehicle. There is no charge to the consumer or manufacturer. Hearings are conducted, and decisions are to be rendered within 45 days of the acceptance of a consumer's request for arbitration. If the arbitrator finds that all requirements of the Lemon Law have been met, the manufacturer must deliver a replacement vehicle or refund within 21 days of the arbitrator's decision, or appeal the finding in superior court.

When filing an appeal, a manufacturer must post a bond for the amount awarded by the arbitrator and an additional $2500 for anticipated attorney fees for the consumer.

If a state-certified arbitration decision is upheld by the court, the consumer is entitled to $25 per day for each day the vehicle is out of service during the appeal period because of its nonconformity. In addition, a finding that the manufacturer had no reasonable basis for appeal entitles the consumer to double the award amount.

A manufacturer who fails to issue timely awards or file timely appeals may be fined $5,000 per day until the award is delivered, and the consumer may sue for double damages. Consumers who are dissatisfied with an arbitrator's decision may file a court claim under G.L. c.93A.

The amendment also requires manufacturers to supply their Massachusetts dealers with stickers listing consumers' rights under the Lemon Law. These stickers must be affixed to all new cars sold in Massachusetts. In addition, consumers must also receive a notice of their Lemon Law rights along with their ownership materials. The full text of the current law is attached as Appendix A.

IV. IMPLEMENTATION OF THE NEW ARBITRATION SYSTEM

A. Start up Activities

The EOCABR began implementation of the new Lemon Law in January 1986. From January 1986 through April 1986, the EOCABR worked to put the system in place: selecting staff and an arbitration firm;

promulgating regulations on how the arbitration program should be structured; and educating consumers and industry on the new law.

Under the arbitration scheme outlined in the current statute, the EOCABR was directed to appoint a professional arbitration firm to conduct arbitration hearings. The EOCABR received six bids for the arbitration contract and selected the American Arbitration Association (AAA), a professional nonprofit arbitration organization. The AAA supplies arbitrators, previously trained in the basics of arbitration, who are then trained by EOCABR staff and the AAA in the elements of the Lemon Law.

In drafting regulations, the EOCABR solicited comments and ideas from manufacturers and various consumer groups which were mailed draft copies of the regulations. A public hearing was held on March 10, 1986, and the regulations went into effect on April 17, 1986. A copy of the regulations is attached as Appendix B.

Throughout the four-month start-up period, the office undertook various efforts to inform and educate consumers about the new arbitration program. The office published a new Lemon Law pamphlet and printed a fact sheet on Lemon Law arbitration. The text of the pamphlet is attached as Appendix C. Consumers inquiring about the law were advised to send a written request to the EOCABR in order to preserve their rights under the 18-month provision of the statute. These consumers were sent official Lemon Law arbitration request forms, once those forms were printed.

In addition to the Request for Arbitration form, the office designed other forms to be used for the program, including an

arbitrator's decision form. The Request for Arbitration form is attached as Appendix D, and the decision form is attached as Appendix E. The EOCABR worked jointly with the Department of the Attorney General to produce an arbitration kit for consumers. On April 7, 1986, EOCABR staff met with local consumer groups to explain how the arbitration process would work.

Manufacturers were notified of their responsibility to designate a person to receive notices under the arbitration scheme by April 27, 1986, and to supply their Massachusetts dealers with Lemon Law stickers and ownership manual information by June 16, 1986.

On April 23, 1986, the EOCABR announced the formal start of the arbitration program.

B. Training of Arbitrators

Seven training sessions for Lemon Law arbitrators have been held around the state, as part of the implementation process. These training sessions are jointly sponsored by the AAA and the EOCABR. There have been five training sessions in Boston, one in Springfield and one in Worcester. A total of 164 arbitrators have gone through the training process. Ninety-five have actually served.

Lemon Law arbitrator training is a three-tiered process. First, arbitrators must have already received training in arbitration. Second, arbitrators are trained by EOCABR and AAA staff in the elements of the Lemon Law statute and regulations. Training materials which arbitrators can use as resources are provided. Arbitrators are briefed on the history of the Lemon Law, the provisions of the statute and regulations, and common issues

involved in Lemon Law cases. Third, to insure that arbitrators will be able to apply the provisions of the statute and regulations, arbitrators must submit a written decision in a hypothetical Lemon Law case before being accepted into the program.

Arbitrators must also submit a Panel Data Sheet containing biographical information. This sheet is screened, and if any potential conflict of interest exists, arbitrators may be restricted as to cases on which they serve. Persons with any current connection to the sale or manufacture of motor vehicles may not serve as arbitrators. According to the regulations, arbitrators cannot be personally acquainted with any of the parties prior to a hearing; cannot have a personal interest in the outcome of the hearing; or be prejudiced against either party.

V. THE ARBITRATION PROCESS: A STEP-BY-STEP DESCRIPTION

The arbitration program is aimed at providing a quick, simple method of resolving disputes under the Lemon Law. It is geared for the nonlawyer participant, not set up as a complicated legal process.

Typically, a case first starts when a consumer calls the Lemon Law office in the EOCABR inquiring about his or her rights. A brochure is sent to the consumer describing what the Lemon Law covers and how to proceed up to the point of arbitration. Once a consumer has followed all the early steps outlined (e.g., sending a certified letter to the manufacturer), but still feels the matter has not been resolved, the consumer may request an arbitration

hearing through the Lemon Law office on an official Request for Arbitration form.

When the form is submitted, it is reviewed by EOCABR staff for completeness and apparent qualification for the program; e.g., meeting the "three repair attempt or 15-day" threshold. No determination of "substantial impairment" or other dispute of fact is decided at this stage. Once approved, the form is stamped with a date of acceptance and turned over to the AAA. AAA is under contract with the EOCABR to conduct the actual arbitration hearings.

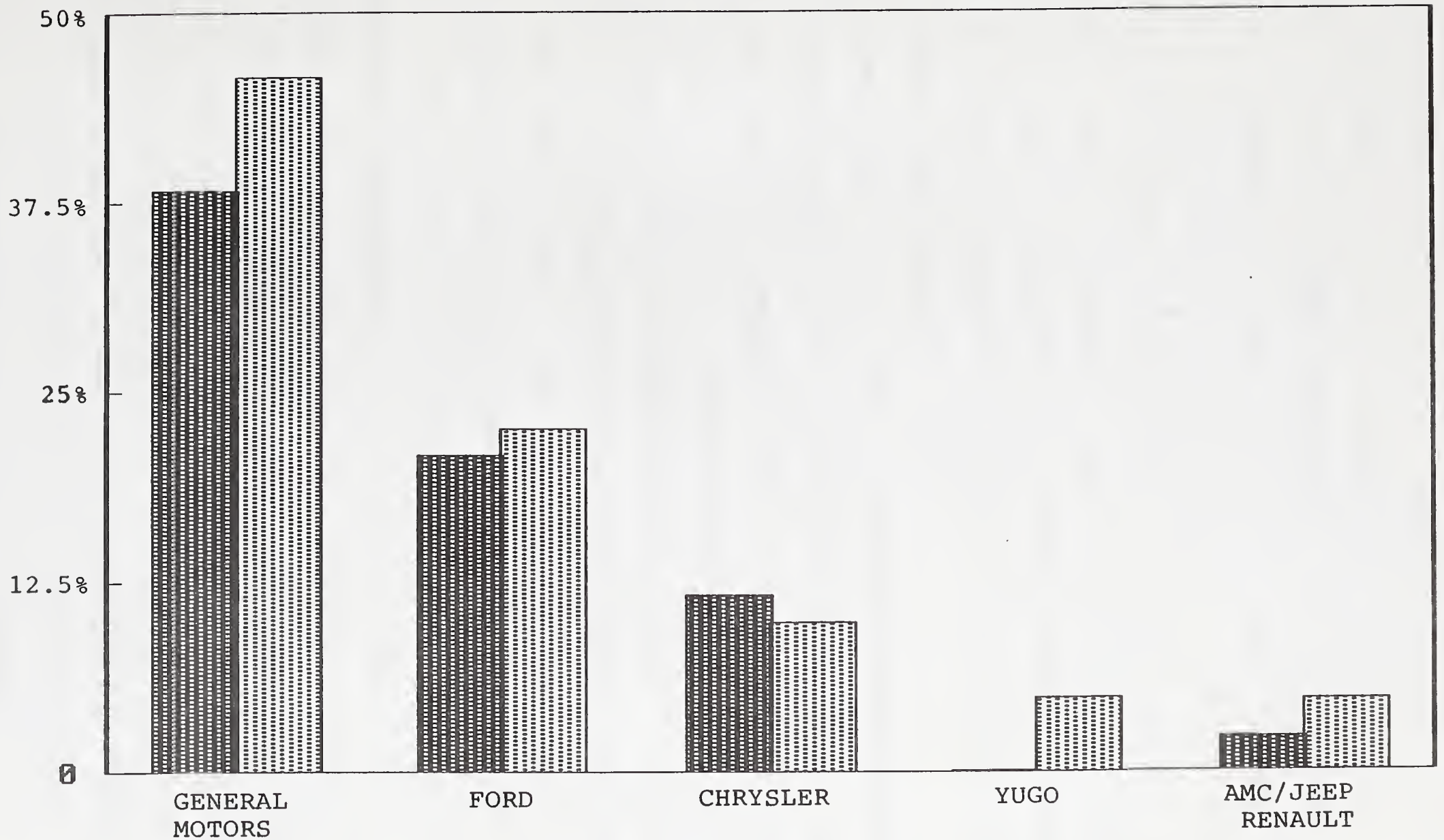
AAA sends out a notice of acceptance within seven days to both the consumer and manufacturer, along with information about the hearing process. The manufacturer is also sent a copy of the accepted Request for Arbitration form and a blank Manufacturer's Response form which is required to be sent back to the AAA and the consumer within 14 days, explaining the manufacturer's version of events.

A hearing is usually scheduled between the 21st day after the date on the letter of acceptance and the 44th day after the date of acceptance. A written notice of actual hearing date is mailed to the parties at least 10 days prior to the hearing.

The hearings are conducted in various locations around the state including the arbitrator's office, the AAA's office, or a library.

At the hearing, the formal rules of evidence do not apply, but either party may be represented by an attorney or other advocate. Typically, the consumer is unrepresented. Several manufacturers regularly use an attorney; others send nonattorney representatives.

COMPARISON OF MARKET SHARE AND REQUESTS FOR ARBITRATION RECEIVED
1986



NOTE: Market share figures are for new cars and trucks under 10,000 lbs. registered in Massachusetts 1-1-86 to 6-30-86 according to R.L. Polk & Company. Arbitration requests based on those received April through December 1986.

CHART II

Forty-six percent of the cases received were for General Motors vehicles, followed by Ford with 23 percent, Chrysler with 10 percent, and Yugo and AMC/JEEP/Renault with five percent each. Since it is reasonable to expect that a car manufacturer with a large share of the market will have a greater number of cases, the number of cases against a manufacturer has to be viewed in relation to its market share. To quantify that relationship, a "lemon index" has been developed to determine the extent to which the number of cases filed against a manufacturer is more than, or less than, the number expected based on market share.

The lemon index reveals that of companies which have had at least 100 vehicles registered in the first half of 1986, Yugo has 24 times the number of complaints that a company with a market share of one-fifth of one percent might be expected to have. On the other hand, Volkswagen, Volvo, and Honda have had about 90 percent fewer cases than might be expected based on their market share, and Jaguar and BMW have had no cases. (See Chart II and Appendix F.)

Consumers voluntarily withdrew in 22 percent of cases received. Cases have been withdrawn for various reasons, such as settlement with the manufacturer or eventual repair of the defect.

Through the end of December 1986, decisions had been rendered in 268 cases. Sixty-six percent have been decided in favor of consumers and 34 percent in favor of manufacturers. Manufacturers have appealed 25 decisions in favor of consumers (9 percent).

One hundred and two consumers had notified the EOCABR that they had received refund awards totaling more than $1.3 million through December 31, 1986. The average award is approximately $13,206.

Both sides of the dispute are heard--the consumer's and the manufacturer's. Either party may question the other, and the arbitrator may question any party or witness. Most arbitrators tape record the hearing, primarily as an aid to remembering the facts presented. A typical hearing lasts an hour and a half.

An arbitrator generally writes the decision on a form developed by the EOCABR which, in essence, requires that the appropriate boxes be checked, indicating whether the requirements of the law have been met. A summary of the evidence presented and a specific calculation of the award, if any, is also included. The purpose of this form is to allow for an easily understood decision which includes a finding on all necessary elements of the law and facts.

Once written, the decision is forwarded by the AAA to the Lemon Law Program for review of technical correctness (e.g., mathematical mistakes). Once reviewed, the decision is mailed by the AAA to the parties. The manufacturer has 21 days from the mailing date to comply with the arbitrator's order (if any) or to appeal the case to superior court.

VI. ARBITRATION SUMMARY:

A. Statistics

The Lemon Law Arbitration Program has proven successful for consumers during its short period of operation--most arbitration decisions are in favor of consumers. As of December 31, 1986, 605 consumers requested arbitration. Of those requests, 491 have been accepted for arbitration. (See Chart II.)

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Three consumers had received replacement vehicles. The office estimates that an additional 24 consumers received another $200,000. (These consumers have not responded to office inquiries.) Another 22 awards were due in early 1987 as of December 31, 1986. (See Appendix F for more statistical information.)

Since April 23, 1986, the LLAP has distributed more than 11,000 information pamphlets and 2,200 request forms. The program receives 200-250 telephone inquiries per week from persons requesting information about the Lemon Law and arbitration procedures.

B. **Consumer Reaction**

Most consumers who have gone through the Lemon Law arbitration system appear to appreciate having a free, quick dispute resolution forum available to them. Consumers have indicated that they were pleased to be able to take their complaints to a neutral decision-maker. One consumer wrote, "Even though I lost the case, I still appreciate your help. It's good to know there is a way for the consumer to be heard."

Others have noted that the system has built-in assistance for consumers: "If it weren't for (EOCABR), we would not have been able to deal with a large (automobile manufacturing) corporation."

One consumer wrote of the effectiveness of the written forms and instructions: "The written materials you provided enabled me to clearly articulate in writing and verbally what the essential (car) problems were."

Another commented on the fairness of the arbitration hearing: "While as a consumer, I felt completely assisted and supported--as

VII

VI

the operator of a small business, I appreciate the impartiality and the objectivity of the process."

The Executive Office is in the process of conducting a survey of all consumers who have gone through the program to obtain factual information and comments about their experience.

VII. ARBITRATION ISSUES: THE EIGHT MONTH EXPERIENCE

In the 268 cases decided to date, several aspects of the law have received special attention at the hearings. Most Lemon Law hearings focus on whether the proper number of repair attempts was made, whether substantial impairment exists, and whether other requirements of the law have been met. However, some cases have also involved issues of interpretation of the statute or regulations. Manufacturers and consumers have requested advisory opinions from the EOCABR concerning some of these issues. Advisory opinions answer general questions about the arbitration process and do not relate specifically to any particular case. Advisory opinions are attached as Appendix G.

The issues raised generally fall into three categories: those concerning what constitutes a lemon; those dealing with the arbitration process; and those dealing with consumer's remedies through arbitration. The most often raised issues in these areas are discussed in Appendix H.

VIII. AREAS TO MONITOR

There are several areas of manufacturer compliance which the EOCABR has been watching closely and plans to continue tracking for possible trends in behavior which will be useful in evaluating the

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program and identifying violations of the statute or regulations. Other areas to monitor involve issues in the arbitration process. These areas are discussed in detail below.

A. Manufacturer Compliance

MANUFACTURER RESPONSES TO REQUESTS FOR ARBITRATION:

Regulations governing arbitration require that manufacturers respond to the specific issues and facts raised in the consumer's Request for Arbitration form within 14 days of receipt of the consumer's accepted request (201 CMR 11.04[7]). This response is important in order to give the consumer and the arbitrator notice of the issues which will be contested at a hearing. While most manufacturers now issue responses in almost every case, some still do not issue responses in a timely manner. One manufacturer, Yugo America, Inc., has not submitted a response in any of its cases. The EOCABR will continue tracking manufacturer responses for possible enforcement action.

AWARD COMPLIANCE/APPEALS:

The Lemon Law allows the manufacturer 21 days from the mailing of an arbitrator's decision to the parties to either issue a refund, set a delivery date for a replacement vehicle, or file an appeal in Superior Court. The arbitration program is time-sensitive in many areas, but this deadline is of the most concern for both consumers and the EOCABR.

Many manufacturers have complained informally that 21 days does not allow them enough time to process award checks within their own

organizations. However, the inclusion of the deadline in the statute indicates the Legislature's intention that consumers receive awards or notice of appeal very soon after their cases have been decided. Through December 31, 1986, the EOCABR had notified manufacturers in 23 cases that their awards had not been issued in a timely fashion. Late awards may be subject to a $5,000 per day fine, and the consumer may also choose to file a court claim for double damages. Some awards have been issued beyond the 21-day period with the consumer's consent. Others were late due to problems scheduling a meeting with the consumer. In 19 of 23 cases, however, the delay was neither caused by, nor with the consent of, the consumer. Consent of the consumer does not relieve the manufacturer of its statutory duty.

At this time, the EOCABR is reviewing with the Department of the Attorney General, what action to take in these cases. We have recently notified all manufacturers that fines will be levied for late awards as of February 20, 1987. (See Chart III.)

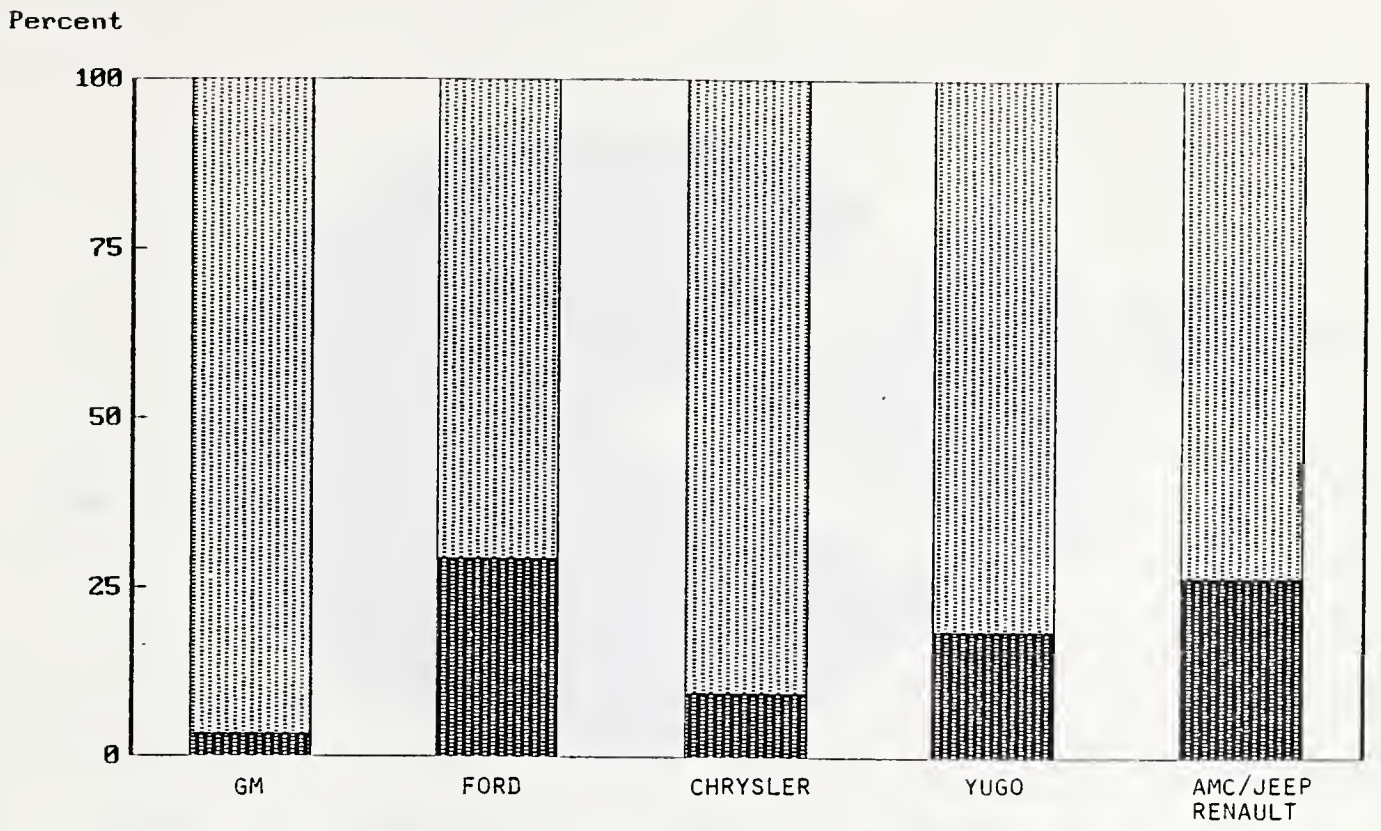
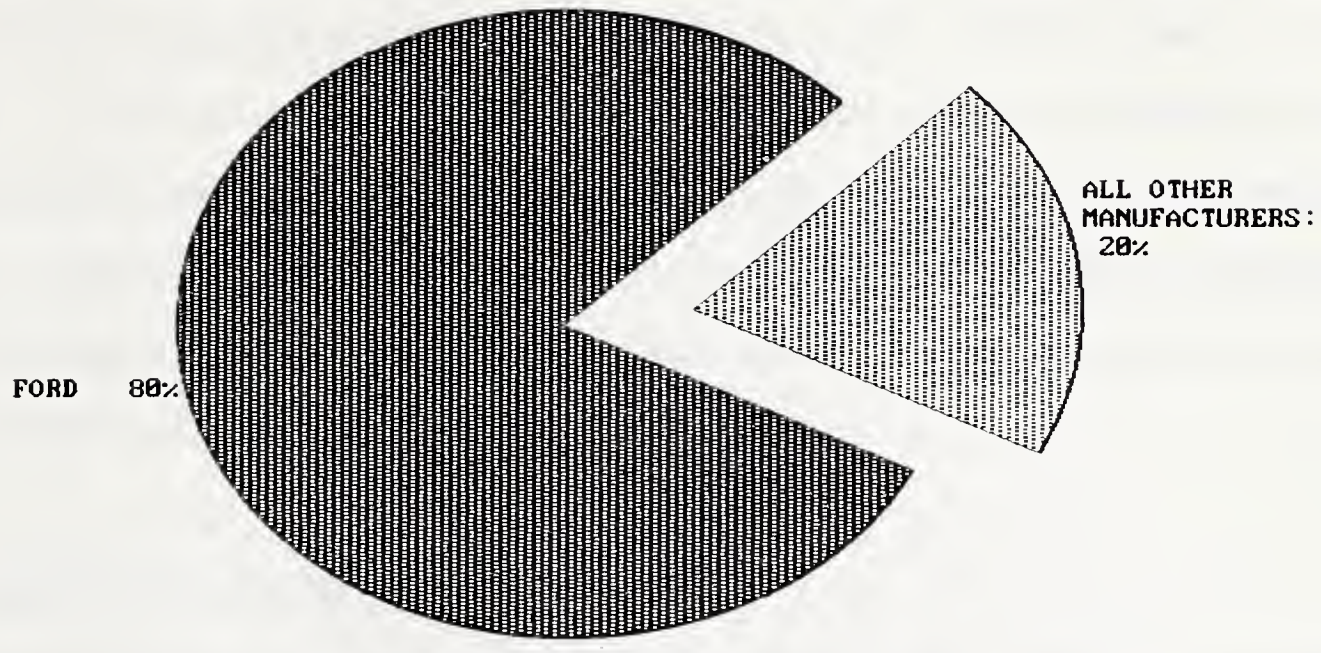


CHART III

Most cases that reach arbitration are decided in favor of the consumer. At the end of the program's first eight months, 178 decisions were for consumers, and manufacturers exercised their right to appeal in 25 of those cases. Ford Motor Company and General Motors Corporation are the only two manufacturers that have filed appeals. Eighty percent of all the appeals in the Lemon Law Arbitration Program can be attributed to one manufacturer--Ford. Ford has appealed 45 percent of its cases decided in favor of consumers (20 cases). General Motors has appealed 7.1 percent of its cases decided in favor of consumers (5 cases). (See Chart IV.)

BREAKDOWN OF TOTAL APPEALS FILED BY MANUFACTURERS (1986)



NOTE: FORD HAS APPEALED 20 OUT OF THE 44 CASES IT LOST. THE ONLY OTHER MANUFACTURER TO APPEAL ANY CASES WAS G.M., WHICH APPEALED 5 OUT OF THE 70 CASES IT LOST.

CHART IV

The statute contains disincentives for filing appeals, such as the requirement that the manufacturer post a bond equal to the amount awarded by the arbitrator, plus an additional $2500 for anticipated attorneys' fees for the consumer. If a court finds that a manufacturer had no reasonable basis for appeal or that the appeal was frivolous, the consumer will be awarded double damages.

It is unclear what standard of review will be used by a court in appealed cases. The Legislature did not specify in the statute whether an appeal would be a new hearing before a Superior Court judge or a limited review of the arbitrator's decision. We hope to have more information on the form of Lemon Law appeals and decisions by the end of the first full year of the program in April, 1987.

AWARD ISSUANCE PROCEDURES:

Some issues have arisen concerning the procedure for actually exchanging the manufacturer's check for the vehicle when a refund is given. Refunds can be complicated transactions involving arrangements for payment of a lienholder, transportation of the vehicle and other issues. The EOCABR is monitoring award issuance procedures for possible ways to streamline and clarify the process to carry out the intent of the law.

LEMON LAW STICKERS:

As of June 16, 1986, all manufacturers are required to supply their Massachusetts dealers with stickers enumerating consumers' Lemon Law rights. The stickers are to be displayed on the windows of all new cars sold in Massachusetts. A spot check of dealers was conducted in August of this year, and only one-third of car brands checked had disclosure stickers on all new vehicles. The office may conduct a similar survey in 1987.

VEHICLES RETURNED UNDER LEMON LAW ARBITRATION:

"Lemons" returned to manufacturers as a result of Lemon Law arbitration cannot be resold in Massachusetts without a clear and conspicuous disclosure of the fact that the vehicle was returned under the Lemon Law (M.G.L. c.90, §7N1/2(5)). The form and content of this disclosure is prescribed by regulation of the Attorney General. It is difficult to track what happens after a vehicle has been returned to the manufacturer. There are several ways of evading the disclosure requirement, such as shipping "lemons" out of

Massachusetts to be sold in other states. The office is investigating ways to track "lemons" after their return.

B. **Program Trends**

HEARINGS/DECISIONS ISSUED BEYOND 45 DAYS AFTER ACCEPTANCE:

The EOCABR has attempted to insure that consumers' arbitration hearings and decisions are completed within 45 days of the acceptance of the arbitration cases, as required by the statute. Initially, many hearings had to be scheduled outside the original 45-day period due to rescheduling requests by either consumers or manufacturers. In other cases, hearings were scheduled beyond the 45-day period due to a lack of trained Lemon Law arbitrators.

Some delays are built into the process. Most hearings cannot be scheduled earlier than 21 days after acceptance for arbitration because of discovery provisions and other notice provisions in the regulations. In 1986, most hearings were scheduled about 30 days after acceptance. When an arbitrator issues a decision, it is sent to AAA, forwarded to the EOCABR to be reviewed for minor technical corrections, and then returned to AAA to be mailed to the parties. Some decisions have been mailed beyond the 45-day period because of delays in the decision process. Generally, arbitrators' decisions are returned to AAA by day 41 after acceptance. Most delays are not extensive, and average 13 days beyond the 45-day deadline.

The program now has a sufficient number of trained arbitrators to handle the caseload, and delays in the review process have been reduced.

SETTLEMENTS:

Twenty-two percent of cases received were voluntarily withdrawn by consumers. Many of these cases were withdrawn as a result of settlements between the consumer and manufacturer prior to the hearing. This has been a positive effect of the program, since it reduces the hearing caseload and also resolves the consumer's dispute early on in the process.

IX. PRIORITIES IN THE NEAR FUTURE:

REVISE REGULATIONS:

After eight months' experience with the arbitration program, there are several issues which could benefit from further clarification in the regulations. The office plans to hold another public hearing in the future to solicit suggested changes to the regulations. Some suggested revisions being considered include:

1. Rescheduling

To avoid backlogs created by excessive rescheduling requests, 201 CMR 11.05(1) could be revised so that each party will only be allowed to reschedule a hearing for a limited set of reasons.

2. Case Numbers

For the purpose of better recordkeeping, the office has been assigning each request for arbitration a case number upon receipt. The current regulations, 201 CMR 11.03(5), require that case numbers be assigned when a case is accepted. A new regulation could require case numbers upon receipt.

3. Consumer's Option

A regulation regarding arbitration decisions now states that it is the consumer's option to choose a refund or replacement (201 CMR

11.10[9c]). This needs to be revised to reflect the office's current interpretation of the statute that a consumer can always reject a replacement and demand a refund, but cannot reject a refund if no replacement is offered. (See Advisory Opinion #3 in Appendix G.)

4. Incomplete Forms

There is no current provision to cover cases in which a consumer fails to return an incomplete form within 19 months of delivery of the vehicle. The office has considered such requests abandoned and withdrawn with prejudice and intends to add a regulation in line with this policy.

5. Documentary Hearing

Generally, both parties will be present at the arbitration to be sworn in by the arbitrator. The office plans to add a regulation which would require a party which submits only written documentary evidence to swear that the evidence presented is true.

X. OUTLOOK/PREDICTIONS

In the first eight months of operation, the Lemon Law Arbitration Program has received 605 requests for arbitration. The program distributed over 11,000 information pamphlets and more than 2,200 request forms during that period. Thirty to fifty consumers, manufacturers and arbitrators call the office each day and the program mails information to 20-30 consumers every day. (See Chart V.)

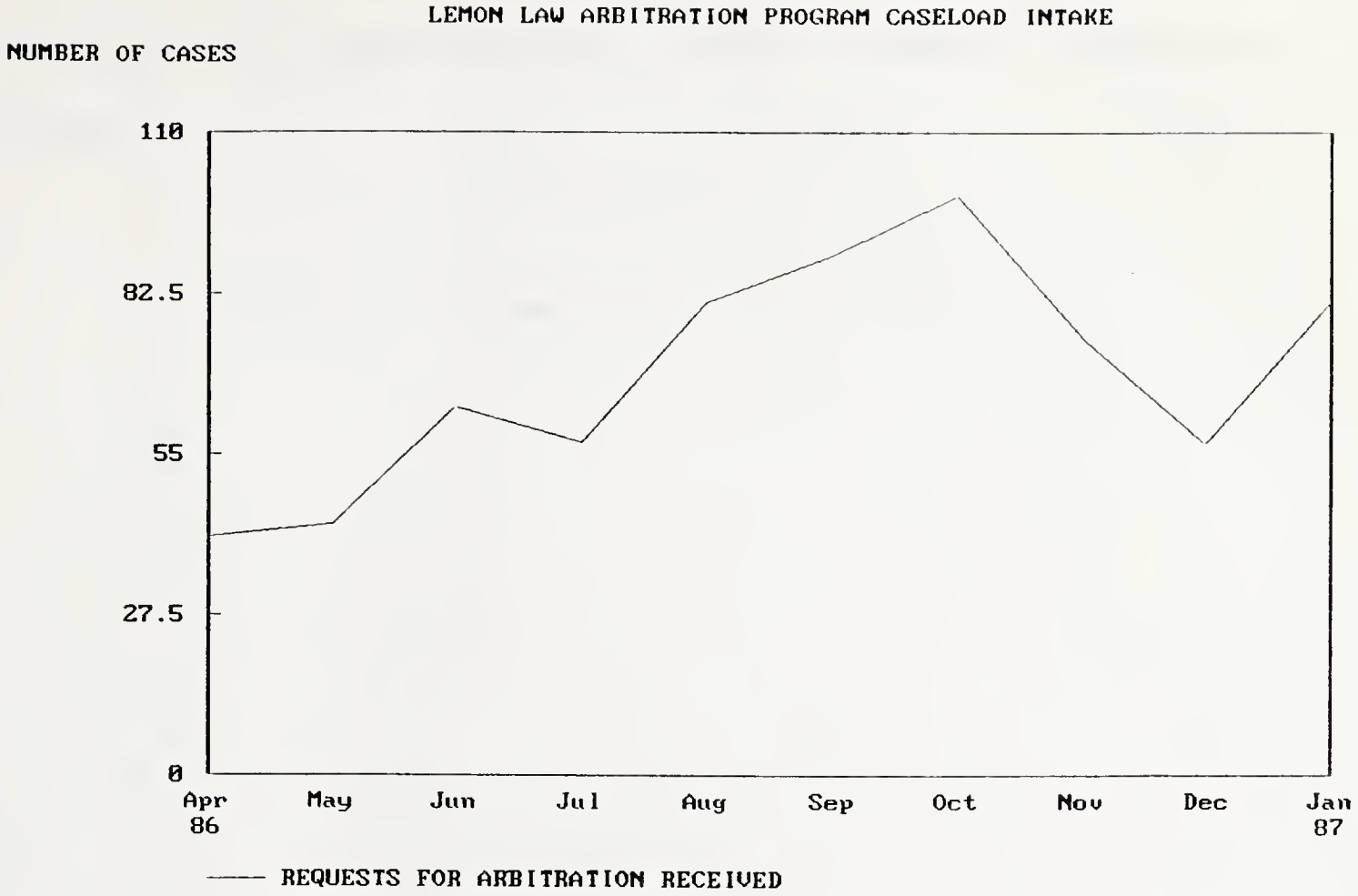


CHART V

The office projects that by the end of the first full year of operation, it will have received over 1000 requests for arbitration, distributed over 2,500 request forms, and handled up to 13,000 telephone inquiries.

The new Lemon Law Arbitration Program has enabled consumers to exercise their Lemon Law rights through a quick, informal and inexpensive means of resolving disputes. The program has been successful, but requires constant monitoring to insure that consumers, manufacturers and arbitrators understand their rights and responsibilities and that the process complies with the statute and regulations. We plan to solicit comments from consumers,

arbitrators and manufacturers in order to further evaluate the program.

APPENDIX A

LEMON LAW II

MASSACHUSETTS GENERAL LAWS CH. 90 §7N½

90:7N ½. Repair or Replacement Warranty Applicable to New Motor Vehicles; Refund of Purchase Price; Definitions; Time and Repair Limitations; Affirmative Defense; Construction of Provisions; Qualified Dispute Settlement Mechanism.

Section 7N ½. (1) For purposes of this section the following terms shall have the following meanings:

"Business day", any day during which the service departments of authorized dealers of the manufacturer of the motor vehicle are normally open for business.

"Consumer", a buyer, other than for purposes of resale, of a motor vehicle, any person to whom such motor vehicle is transferred during the duration of any express or implied warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce its obligations.

"Dealer", any class one seller of motor vehicles as defined in section fifty-eight of chapter one hundred and forty.

"Manufacturer", any person who is engaged in the business of manufacturing motor vehicles, or, in the case of motor vehicles not manufactured in the United States, any person who is engaged in the business of importing motor vehicles.

"Motor vehicle" or "vehicle", any motor vehicle as defined in section one sold or replaced by a dealer or manufacturer after the effective date of this section, except that it shall not include auto homes, vehicles built primarily for off-road use or any vehicle used primarily for business purposes.

"Nonconformity", any specific or generic defect or malfunction, or any concurrent combination of such defects or malfunctions that substantially impairs the use, market value or safety of a motor vehicle.

"Term of protection", one year or fifteen thousand miles of use from the date of original delivery of a new motor vehicle, whichever comes first; or, in the case of a replacement vehicle provided by a manufacturer to a consumer under this section, one year or fifteen thousand miles from the date of delivery to the consumer of said replacement vehicle, whichever comes first.

(2) If a motor vehicle does not conform to any applicable express or implied warranty, and the consumer reports the nonconformity to the manufacturer of the vehicle, its agent or its authorized dealer during the term of protection, the manufacturer, its agent or its authorized dealer shall effect such repairs as are necessary to conform the vehicle to such warranty.

[Subsection (3) as amended by 1985, 702, Sec. 1 effective December 31, 1985. For text effective until December 31, 1985, see 1984 Edition.]

(3) If the manufacturer, its agent or authorized dealer does not conform the motor vehicle to any such applicable express or implied warranty by curing any nonconformity after a reasonable number of attempts, the manufacturer shall accept return of the vehicle from the consumer and refund the full contract price of the vehicle including all credits and allowances for any trade-in vehicle, less any cash award that was made by the manufacturer in an attempt to resolve the dispute and was accepted by the consumer, and a reasonable allowance for use, or shall offer to replace the vehicle; provided, however, that the consumer shall have an unqualified right to reject a manufacturer's offer of replacement and demand a refund. In instances in which a vehicle is replaced by a manufacturer under the provisions of this section, said manufacturer shall reimburse the consumer for any fees for the transfer of registration or any sales tax incurred by the consumer as a result of such replacement. In instances in which a vehicle which was financed by the manufacturer or its subsidiary or agent is replaced under the provisions of this section, said manufacturer, subsidiary or agent shall not require the consumer to enter into any refinancing agreement which would create any financial obligations upon such consumer beyond those implied by the original financing agreement. In instances in which a refund is tendered under the provisions of this section, the manufacturer shall also reimburse the consumer for incidental costs including sales tax, registration fee, finance charges and any cost of options added by an authorized dealer. Whenever a vehicle is replaced a refund is given under the provisions of this section, in instances in which towing services and rental vehicles were not made available at no cost to the consumer, the manufacturer shall also reimburse the consumer for towing and reasonable rental costs that were a direct result of vehicle nonconformity. Refunds shall be made to the consumer and lienholder, if any, as their interests may appear. A reasonable allowance for use for all motor vehicles other than motorcycles shall be obtained by multiplying the total contract price of

the vehicle by a fraction having as its denominator one hundred thousand and having as its numerator the number of miles that the vehicle travelled prior to the manufacturer's acceptance of its return. A reasonable allowance for use for motorcycles shall be obtained by multiplying the total contract price of the motorcycle by a fraction having as its denominator twenty-five thousand and having as its numerator the number of miles that the vehicle travelled prior to the manufacturer's acceptance of its return.

It shall be an affirmative defense to any claim under this section: (i) that an alleged nonconformity does not substantially impair the use, market value or safety of the vehicle; (ii) that a nonconformity is the result of owner negligence, damage caused by accident, vandalism, or attempt to repair the vehicle by a person other than the manufacturer, its agent or authorized dealer; or (iii) that a nonconformity is the result of any attempt substantially to modify the vehicle which was not authorized by the manufacturer.

A consumer shall have the option of retaining the use of any vehicle returned under the provisions of this section until such time as said consumer has been tendered a full refund or a replacement that is acceptable to the consumer. The use of any vehicle retained by a consumer after its return to a manufacturer under the provisions of this section, shall, in instances in which a refund is tendered, be reflected in the above mentioned reasonable allowance for use.

(4) A reasonable number of attempts shall be deemed to have been undertaken to conform a motor vehicle to any applicable express or implied warranties if (a) the same nonconformity has been subject to repair three or more times by the manufacturer or its agents or authorized dealers within the term of protection, but such nonconformity continues to exist or such nonconformity has recurred within the term of protection, or (b) the vehicle is out of service by reason of repair of any nonconformity for a cumulative total of fifteen or more business days during the term of protection; provided, however, that the manufacturer shall be afforded one additional opportunity, not to exceed seven business days, to cure any nonconformity arising during the term of protection, notwithstanding the fact that such additional opportunity to cure commences after the term of protection. Such additional opportunity to cure shall commence on the day the manufacturer first knows or should have known that the limits specified in clause (a) or (b) have been met or exceeded. The term of protection, said fifteen business day period and said additional opportunity to cure shall be extended by any period of time during which repair services are not available to the consumer as a direct result of a war, invasion, fire, flood or other natural disaster. The term of protection, said fifteen business day period and said additional opportunity to cure shall also be extended by that period of time

during which repair services are not available as a direct result of a strike; provided, however, that the manufacturer, its agent, or authorized dealer provides or makes provision for the free use of a vehicle to any consumer whose vehicle is out of service by reason of repair during a strike. The burden shall be on the manufacturer to show that any event claimed as a reason for an extension under the provisions of this paragraph was the direct cause for the failure of the manufacturer, its agent or authorized dealer to cure any nonconformity during the time of said event. Extensions for concurrent events shall not be cumulative.

(5) Nothing in this section shall be construed as imposing any liability on an authorized dealer or creating any cause of action by a consumer against a dealer under the provisions of this section.

Nothing in this section shall be construed to limit the rights or remedies which are otherwise available to a consumer or manufacturer under any other applicable provision of law.

Nothing in this section shall be construed as imposing any liability on a dealer or creating a cause of action by a manufacturer against its authorized dealer under this section except with respect to (i) failure by an authorized dealer to properly effect preparation, installation of options or repairs when such preparation, installation of options or repairs would have prevented the occurence of or cured a nonconformity; (ii) express warranties offered by an authorized dealer which exceed the provisions of the manufacturer's express warranties; and (iii) that portion of the cost of reimbursing a consumer for dealer-added options which represents the dealer profit from the addition of such options. The manufacturer shall reimburse its authorized dealer for all incidental and consequential damages, including attorney's fees, incurred by such dealer as a direct result of any legal action brought by a consumer under this section.

[Fourth paragraph of subsection (5) as amended by 1985, 702, Sec. 2 effective December 31, 1985. For text effective until December 31, 1985, see 1984 Edition.]

No consumer shall be required by any manufacturer, its agent or its authorized dealer to give notice directly to a manufacturer of the existence of any nonconformity before resorting to state-certified, new car arbitration.

No motor vehicle that is returned to the manufacturer under the provisions of this section shall be resold in the commonwealth without clear and conspicuous written disclosure of the fact that it was so returned prior to resale of the vehicle. The attorney general shall prescribe the exact form and content of any such disclosure statement.

[Subsection (6) as amended by 1985, 702, Sec. 3 effective December 31, 1985. For text effective until December 31, 1985, see 1984 Edition.]

(6) All manufacturers shall submit to state-certified, new car arbitration, if such arbitration is requested by the consumer within eighteen months from the date of original delivery to such consumer of a new motor vehicle. State-certified, new car arbitration shall be performed by a professional arbitrator or arbitration firm appointed by the secretary of consumer affairs and business regulation and operating in accordance with the regulations promulgated pursuant to this section, and shall result in a written finding of whether the motor vehicle in dispute meets the standards set forth by this section for vehicles that are required to be replaced or refunded. Said finding shall be issued within forty-five days of receipt by said secretary of a request by a consumer for state-certified arbitration under this section. Said secretary shall promulgate rules and regulations governing the proceedings of state-certified, new car arbitration which shall promote their fairness and efficiency. Such rules and regulations shall include, but not be limited to, a requirement of the personal objectivity of each arbitrator in the results of the dispute he will hear, and the protection of the right of each party to present its case and to be in attendance during any presentation made by the other party. All findings of fact issuing from a state-certified, new car arbitration shall be taken as prima facie evidence of whether the standards set forth in this section for vehicles required to be refunded or replaced have been met in any subsequent action brought by either party ensuing from the matter considered in said arbitration.

If a motor vehicle is found by state-certified, new car arbitration to have met the standards set forth by this section for vehicles required to be replaced or refunded, and if the manufacturer of said motor vehicle is found to have failed to provide said refund or replacement as required, such manufacturer shall, within twenty-one days from the issuance of such finding, deliver such refund or replacement, including the incidental and other costs set forth in subsection (3), or appeal the finding in superior court. No appeal by a manufacturer shall be heard unless the petition for such appeal is filed with the clerk of the superior court within twenty-one days of issuance of the finding of the state-certified arbitration and is accompanied by a bond in a principal sum equal to the money award made by the state-certified arbitrator plus two thousand five hundred dollars for anticipated attorneys' fees, secured by cash or its equivalent, payable to the consumer.

The liability of the surety of any bond filed pursuant to this section shall be limited to the indemnification of the consumer in the action. Such bond shall not limit or impair any right of recovery otherwise available pursuant to law, nor shall the amount of the bond be relevant in determining the amount of recovery to which the consumer shall be entitled. In the event that any state-certified arbitration, resulting in an award of a refund or replacement, is upheld by the court, recovery by the consumer shall include continuing damages in the amount of twenty-five dollars per day for each day, subsequent to the day the motor vehicle was returned to the manufacturer pursuant to subsection three, that said vehicle was out of use as a direct result of any nonconformity not issuing from owner negligence, accident, vandalism, or any attempt to repair or substantially modify the vehicle by a person other than the manufacturer, its agent or authorized dealer; provided, however, that the manufacturer did not make a comparable vehicle available to the consumer free of charge. In addition to any other recovery, any prevailing consumer shall be awarded reasonable attorneys' fees and costs. If the court finds that the manufacturer did not have any reasonable basis for its appeal or that the appeal was frivolous, the court shall double the amount of the total award made to the consumer. Any consumer dissatisfied with any finding of state-certified, new car arbitration shall have the right to file a claim pursuant to chapter ninety-three A.

[Subsection (6A) added by 1985, 702, Sec. 3 effective December 31, 1985.]

(6A) A clear and conspicuous listing of the rights of the consumer under this section shall be affixed by a sticker to a window of each new motor vehicle offered for sale in the commonwealth. An enumeration of these rights shall also be provided along with ownership manual materials. The form and manner of these notices shall be prescribed by the secretary of consumer affairs and business regulations.

[Subsection (7) as added by 1985, 702, Sec. 3 effective December 31, 1985. See, also, subsection (7) as added by 1983, 395, Sec. 1, in 1984 Edition.]

(7) Failure to comply with any of the provisions of this section shall constitute an unfair or deceptive act under the provisions of chapter ninety-three A. The failure of a manufacturer either to abide by the decision of a state-certified arbitration or to file a timely appeal shall entitle any prevailing consumer to an award of no less than two times the actual damages, unless said manufacturer can prove that such failure was beyond his control. For the purposes of said chapter ninety-three A, the timely delivery by a manufacturer of a refund or acceptable replacement, pursuant to a finding by state-certified arbitration, shall constitute the granting of relief upon demand.

The secretary of consumer affairs and business regulation shall inform the office of the attorney general of any method, act or practice of which she is aware that is deemed by her to be a violation of any provision of this section.

[Subsection (8) added by 1985, 702, Sec. 3 effective December 31, 1985.]

(8) Whoever, within twenty-one days of any finding in favor of the consumer of the state-certified, new car arbitration, fails to appeal such finding and does not deliver a refund or replacement vehicle or notify the consumer of the estimated delivery date of the replacement vehicle, shall be punished by a fine of five thousand dollars per day until the delivery of such refund or replacement. The estimated delivery date shall not exceed sixty days from the date the manufacturer notifies the consumer that a delivery will be made. Said fine shall not exceed fifty thousand dollars for each such violation. The amount of said fine shall begin to accumulate on the twenty-second day following the arbitration decision. If eighty-one days has elapsed from the issuance of a finding in favor of the consumer of the state-certified, new car arbitration and no appeal has been taken and no award delivered and no fine paid, the attorney general shall initiate proceedings against said manufacturer for failure to pay said fine. The proceedings initiated pursuant to the provisions of this section shall be commenced in superior court department of the trial court.

In addition to the remedies hereinbefore provided, the attorney general may bring an action on behalf of the commonwealth to restrain further violation of this section, to enforce any provision, and for such other relief as may be appropriate.

APPENDIX B

201 CMR: EXECUTIVE OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

201 CMR 11.00 LEMON LAW ARBITRATION

11.01 PURPOSE AND DEFINITIONS

(1) Purpose

(a) These regulations are promulgated pursuant to the "New Car Lemon Law," M.G.L. c.90 s.7N1/2, as amended. They set forth the procedures for and operation of state-certified new car arbitration as required by that law. The arbitration regulations are designed to promote the speedy, efficient, and fair disposition of disputes arising out of defective new motor vehicles.

(2) Definitions

(a) Unless otherwise stated, terms used in these regulations are as defined or used in M.G.L. c.90 s.7N1/2.

(b) ARBITRATOR: usually means an individual arbitrator, but in certain contexts may mean "arbitration firm." In all instances it means that entity selected by the Executive Office of Consumer Affairs and Business Regulation to conduct state-certified new car arbitrations.

11.02 ARBITRATION REQUESTS

(1) To apply for state-certified new car arbitration a consumer must submit a "request for arbitration" form, which will be supplied on request by the Executive Office of Consumer Affairs and Business Regulation (EOCABR).

(a) To be eligible for arbitration, the submitted form must be timely: received by the Lemon Law Arbitration Director at the EOCABR within 18 months of the date the original buyer took possession of the motor vehicle.

(b) Consumers who submit forms after such 18 month period are still eligible for arbitration, if the manufacturer voluntarily agrees to participate. In such case, the deadline for completion of forms specified in 201 CMR 11.03(3)(a) shall not apply.

(c) During periods when forms are not available, any written request for arbitration received within such 18 month time period shall be timely.

(2) To be accepted for arbitration, the request for arbitration must:

(a) be timely;

(b) be complete;

(c) state that the consumer believes the motor vehicle's use, market value, or safety is substantially impaired by the nonconformity(s) complained of;

(d) state that the nonconformity(s) complained of is not the result of owner negligence, damage caused by accident (except as a result of the nonconformity(s)), vandalism, attempts to repair the vehicle by a person other than the manufacturer, its agent or authorized dealer, or any attempt to substantially modify the vehicle without the manufacturer's authorization;

(e) state that the consumer either gave the manufacturer, its agent or authorized dealer at least three attempts to correct the same substantial defect, or that the vehicle was out of service by reason of repair for at least 15 business days within the term of protection;

(f) state that the consumer gave the manufacturer its 7 business day final opportunity to cure the non-conformity(s) after the limits set forth in 201 CMR 11.02(2)(e) were met or exceeded;

(g) include a narrative description of the claimed nonconformity(s) and a chronology of the repair attempts;

(h) not be a request for an additional state-certified new car arbitration except as permitted by 201 CMR 11.12; and

(i) be in compliance with all other rules, regulations, procedures and provisions of law.

11.03 PROCESSING OF ARBITRATION FORMS

(1) Requests for arbitration forms shall be processed in a timely manner.

(2) Submitted arbitration forms shall be date-stamped upon receipt to indicate if they are timely requests for arbitration as defined in 201 CMR 11.02(1), and shall be processed in a timely manner.

(3) Submitted forms shall be reviewed for completeness and compliance with 201 CMR 11.02.

(a) Incomplete forms shall be returned to the consumer promptly for completion. Such forms when completed must be received by the EOCABR within 19 months from the date the original buyer took possession of the motor vehicle; except when failure to complete the form is due to the untimely processing of the request for arbitration form by the EOCABR.

(b) Forms found not in compliance with 201 CMR 11.02 will be rejected, with the reason for rejection sent to the consumer. Timeliness of the submitted form shall be preserved for six months after any rejection.

(4) Complying, complete, reviewed forms shall be date-stamped to indicate their acceptance for arbitration. This acceptance date shall trigger the 45 day period in which the arbitrator must render a decision in the case, and shall be deemed to be the date "received" for purposes of M.G.L. c.90 s.7N1/2.

(5) When a form is accepted, it shall have a case number assigned to it.

11.04 NOTIFICATION AND SCHEDULING OF ARBITRATION HEARINGS

(1) Each manufacturer of cars sold in Massachusetts shall forward to the EOCABR within 10 days after the effective

date of these regulations the name, address, and telephone number of the person designated by said manufacturer to receive notices under this arbitration process. Such information shall be presumed to be correct unless updated by the manufacturer.

(2) Hearing schedules must attempt to accommodate the geographic and time-of-day needs of the consumer and manufacturer.

(3) Evening and weekend hours shall be made available for hearings if justified.

(4) Within 7 days of acceptance of a request for arbitration, a notice shall be mailed by the arbitrator to the consumer and to the manufacturer or its designee which shall indicate that the consumer's request for arbitration has been accepted. General information about the arbitration process shall also be included. A copy of the consumer's request for arbitration and accompanying narrative shall also be sent to the manufacturer or its designee. This shall constitute sufficient notice to the manufacturer that its final opportunity to cure the nonconformity(s) within 7 business days has begun if the consumer had not previously given such opportunity to the manufacturer.

(5) The date of the hearing shall be within 44 days of the date that the request for arbitration was accepted. The hearing shall be held no earlier than 21 days after the date of the notice of acceptance unless agreed to by both parties. Notice of the date, time, location of the hearing, and name of the arbitrator shall be mailed by the arbitrator to both parties no later than 10 days prior to the hearing.

(6) No later than seven days prior to the hearing, the arbitrator may call both parties to confirm the hearing date. This call shall constitute sufficient notice should either party claim nonreceipt of the notice provided for in 201 CMR 11.04(5).

(7) Within 14 days of the date of the notice of acceptance of the consumer's request for arbitration, the manufacturer shall mail to the consumer and to the arbitrator a specific response to the facts and issues raised in the consumer's request for arbitration form.

(8) Notice of all procedural actions in any case by the arbitrator shall be made to all parties and the EOCABR.

11.05 ARBITRATION RESCHEDULING

(1) Each party shall be allowed only one request to reschedule the arbitration hearing. A rescheduled hearing cannot again be rescheduled by the party who requested the original rescheduling, except pursuant to 201 CMR 11.12(2). Denial of a request for a second rescheduling if made by the consumer shall constitute a withdrawal with prejudice, and if made by the manufacturer shall constitute a default without good cause.

(2) A rescheduling request to the arbitrator may be accomplished by any reasonable means, but must actually be received by the arbitrator no later than the business day before the scheduled hearing.

(3) Requests to reschedule hearings on the day of the hearing shall be treated according to 201 CMR 11.06.

(4) Upon receipt of a request for rescheduling, the arbitrator shall record the date it was received, and assign a new hearing date and location falling within the original 44 day period provided for in 201 CMR 11.04(5) if one is available. Notice of such new date shall be made to both parties by any means appropriate for the time then remaining before the hearing.

(5) If no new hearing date can be scheduled within the original 44 day period as provided in 201 CMR 11.04(5) as a result of a request to reschedule, a new hearing date shall be set to fall within 44 days of receipt of the request to reschedule. A new "accepted for arbitration" date shall be stamped on the request for arbitration by the arbitrator replacing the existing one with the date of receipt of the rescheduling request. Notice to the parties shall be made in accordance with 201 CMR 11.04(5), except that the 21 day rule shall not apply.

(6) The arbitrator or the EOCABR may reschedule any hearing due to circumstances beyond their control. In such case, the procedure outlined in 201 CMR 11.05(4),(5) shall be utilized.

11.06 DEFAULTS

(1) A party defaults when he either requests a reschedule on the day of the hearing, or fails to appear at the hearing.

(2) If a manufacturer or its designee requests a reschedule without good cause on the day of the hearing, fails to appear at the hearing, or otherwise defaults without good cause, the arbitrator shall hold the hearing. The arbitrator shall make a decision based on the

evidence presented by the consumer, and any of the manufacturer's evidence already in the arbitrator's possession.

(3) If the manufacturer, by the end of the next business day following the hearing but prior to the issuance of a written decision by the arbitrator, demonstrates good cause to the arbitrator for defaulting, the default shall be considered a request for rescheduling, and subject to the limits on requesting rescheduling set forth in 201 CMR 11.05. If the limits on rescheduling have not been reached, a completely new hearing shall be held, disregarding any evidence presented by the consumer previously (if any).

(4) If the consumer defaults without good cause, it shall be considered a withdrawal of the request for arbitration. The hearing shall be cancelled if the consumer defaults with or without good cause.

(5) If the consumer by the end of the next business day following the hearing demonstrates to the arbitrator good cause for defaulting, the default shall be considered a request for rescheduling, and be subject to the limits on requesting rescheduling pursuant to 201 CMR 11.05.

(6) If both parties default, the disposition of the case shall be handled as if only the consumer defaulted pursuant to 201 CMR 11.06(4),(5).

(7) In the case of any default without good cause when a hearing is not held, the defaulting party shall promptly pay to the EOCABR the cost of the abandoned hearing, if any.

11.07 WITHDRAWAL

(1) A consumer may withdraw his request for arbitration at any time.

(2) Withdrawals received prior to the day of the hearing, shall constitute a full and complete withdrawal from the arbitration system, except that the timeliness of a consumer's accepted request for arbitration shall be preserved for six months after the consumer's first voluntary withdrawal and the time requirements of 201 CMR 11.03(3) shall be extended by six months.

(3) Withdrawals received on the day of the hearing or as a result of a default without good cause will be considered a "withdrawal with prejudice."

11.08 DISCOVERY

(1) Upon request, a party shall provide to the other and to the arbitrator, any documents or other information that will reasonably assist the requesting party in presenting its case. The request must be timed to allow a reasonable time for the gathering of the information by the other party, and the response must be received by the requesting party no later than 3 days before the hearing.

(2) Within 7 days of any request, any dealer or repair shop which services the consumer's motor vehicle shall provide a copy of all requested work orders, diagnoses, bills, or other relevant documents or information.

(3) The parties involved are encouraged to provide the foregoing documents at no charge. However, only if the number of individual pages requested exceeds 50, may the party or entity providing the copies charge the other for such copies. Only the actual cost of all photocopying, not to exceed 10 cents per page may be charged.

(4) The parties shall comply with any requests for additional information made by the arbitrator within 7 days, or within such period as the arbitrator designates.

11.09 THE HEARING

(1) The conduct of the hearing shall encourage a full and complete disclosure of the facts.

(2) The formal rules of evidence shall not apply. The parties may introduce any relevant evidence that will assist the arbitrator in making a decision. It shall, however, be in the arbitrator's sole discretion whether to examine or ride in the consumer's vehicle.

(3) The consumer or his representative shall present his evidence and witnesses (if any), then the manufacturer or its representative shall present its.

(4) Each party may question the other after his presentation, and may question each witness after his testimony. The arbitrator may question any party or witness at any time.

(5) After a warning, the arbitrator may suspend any hearing which becomes unmanageable due to the behavior of either party.

(a) Such suspended hearing shall be considered a withdrawal with prejudice if caused primarily by the consumer.

(b) Such suspended hearing shall be considered a default without good cause if caused primarily by the manufacturer.

(6) Each party is responsible for presenting all his evidence in a concise manner on the day of the hearing.

(7) Unless the arbitrator gets the consumer's written consent to a delayed decision, the arbitrator may keep the record open only for additional evidence that he requests if that will not interfere with the timely rendering of a decision. Such additional evidence shall be provided to both parties.

(8) Unless the arbitrator gets the consumer's written consent to a delayed decision, the arbitrator may continue a hearing only if that will not interfere with the timely rendering of a decision.

(9) The arbitrator shall make all reasonable efforts to tape record the hearing.

(10) The arbitrator shall administer an oath or affirmation to each individual who testifies.

(11) The hearing procedure contemplates that both parties will be present. However, either party may offer written testimony only, as long as the arbitrator and the other party are informed of such and are in receipt of that evidence prior to the day of the hearing.

(12) In unusual circumstances, a party may present its case by telephone, provided that adequate advance notice is given to the arbitrator and to the other party. In such cases, the party requesting the telephonic hearing shall pay all costs associated therewith, including but not limited to costs for long distance calls, conference calls, and telephone amplification equipment.

(13) There shall be a single arbitrator conducting each hearing, the choice of whom is not subject to the approval of either party; except upon a finding by the arbitration firm or the EOCABR of the arbitrator's bias, fraud, or disqualification based on 201 CMR 11.09(14).

(14) The arbitrator must not have a personal interest in the outcome of any hearing, nor be acquainted with any of the participants except as such acquaintance may occur in the hearing process, nor hold any prejudice toward any party. The arbitrator shall have no current connection to the sale or manufacture of motor vehicles.

11.10 THE DECISION

(1) The arbitrator shall mail a decision in each case within 45 days of the acceptance date stamped on the request for arbitration form. Failure to mail the decision within such time period, or to hold the hearing within 44 days of acceptance of the request for arbitration, shall not invalidate the decision.

(2) All decisions shall be in writing, dated and signed by the arbitrator, and mailed to both parties and the EOCABR.

(3) The decision may be a written "summary decision" which merely indicates whether or not the motor vehicle in question meets the standards set forth in c.90 s.7N1/2 for replacement or refund, and the amount of the money award; provided that a full written decision is mailed within 14 days of the summary decision.

(4) The date of mailing of the initial decision, whether "summary" or "full" shall determine compliance with the 45 day requirement and be the date used to calculate appeal deadlines.

(5) The arbitrator may make an oral decision at the hearing but it shall not be binding until a written decision is mailed, and shall not be used to determine compliance with any time-sensitive deadlines.

(6) The full written decision shall contain a summary of the evidence presented, a finding of facts, a conclusion of whether the motor vehicle meets the standards for refund or replacement, a clear calculation of the monetary award if the vehicle meets such standards, and an order if appropriate.

(7) Any monetary award shall be calculated in accordance with c.90 s.7N1/2, but may be affected by any previous awards or settlements made to the consumer.

(8) The arbitrator's decision shall only determine whether the motor vehicle does or does not meet the standards for refund or replacement.

(9) As long as the arbitrator determines that:

(a) The nonconformity(s) complained of substantially impairs the use, market value, or safety of the vehicle; and

(b) The consumer gave the manufacturer or dealer a reasonable number of attempts to repair the vehicle as defined in c.90 s.7N1/2(4), and

(c) That all other requirements of c.90 s.7N1/2 have been met,

the arbitrator must find for the consumer, and order the manufacturer to make a refund or replacement at the consumer's option within 21 days.

(10) In determining compliance with 201 CMR 11.10(9)(a) the arbitrator shall consider the entirety of the circumstances in each case, including but not limited to one or more of the following:

(a) Whether the motor vehicle's market value is at least 10% lower than it would have been but for the nonconformity(s);

(b) How seriously the nonconformity(s) interferes with the consumer's use of the motor vehicle; and

(c) Whether the nonconformity(s) creates or has the potential to create a substantial danger to occupants, others, or to property;

provided however, that evidence that the nonconformity(s) can be repaired given an additional attempt(s) subsequent to the hearing shall not be taken into consideration by the arbitrator in determining whether the vehicle is substantially impaired.

11.11 DISPUTING THE ARBITRATOR'S DECISION

(1) The arbitrator or the EOCABR may make "technical corrections" to an arbitrator's decision. "Technical corrections" shall generally be defined as computational corrections, typographical corrections, or other minor corrections.

(2) Requests for technical corrections shall be made in writing, setting forth the requested correction and reason therefor, and must be received by the arbitrator within 14 days of the mailing of the arbitrator's full written decision.

(3) All claims concerning procedural irregularities, or complaints concerning an arbitrator's conduct or legal errors should be made in writing to the EOCABR. This information is requested to assist the EOCABR in its oversight of the arbitration process and shall not constitute an appeal of any kind.

(4) The arbitrator's decision is final. A dissatisfied manufacturer may appeal a decision through a court of competent jurisdiction. A dissatisfied consumer may file a suit against the manufacturer under c.93A.

11.12 ADDITIONAL ARBITRATIONS

(1) Consumers are generally entitled to only one state-certified new car arbitration per motor vehicle. Participation in any other arbitration or dispute resolution mechanism shall not affect eligibility for state-certified new car arbitration.

(2) It shall be within the discretion of the EOCABR or the arbitrator whether to allow a new arbitration or participation in arbitration after a withdrawal with prejudice by a consumer, after a party reaches the limit on rescheduling or after a consumer has not prevailed in a previous state-certified new car arbitration. In the case of the latter, the consumer must show a significant change in circumstances that would now qualify the vehicle for refund or replacement.

11.13 NOTICE TO CONSUMERS

(1) Beginning no later than 60 days after the effective date of these regulations, all new motor vehicles and those used motor vehicles still within the term of protection which are sold, offered for sale, or displayed in Massachusetts shall have affixed to the window (or in the case of motorcycles, conspicuously affixed to the body) by yellow sticker the following in not smaller than 10 point type:

ATTENTION CONSUMERS

The Massachusetts "Lemon Law," General Laws Chapter 90, Section 7N 1/2 provides protection for consumers who have serious problems with their new vehicle.

UNDER THE LEMON LAW, YOU HAVE A RIGHT TO A REFUND OR REPLACEMENT OF THE VEHICLE IF:

(a) there is a substantial defect(s), AND

(b) the defect(s) still exists or has recurred after either:

1. three or more repair attempts for the same defect, or

2. being out of service by reason of repair

for any combination of defects for a cumulative total of 15 or more business days,

within one year or 15,000 miles (whichever comes first) after original delivery, AND

(c) the manufacturer has been notified of the defect and given one final repair attempt of no more than 7 business days.

IF THE MANUFACTURER DOES NOT REFUND OR REPLACE THE VEHICLE, YOU HAVE A RIGHT TO HAVE YOUR CASE ARBITRATED BY THE STATE.

FOR MORE INFORMATION, REFER TO THE "LEMON LAW" INFORMATION PROVIDED WITH YOUR OWNERSHIP MANUAL MATERIALS, OR CONTACT:

Lemon Law Arbitration Program
Executive Office of Consumer Affairs
and Business Regulation
One Ashburton Place
Boston, Massachusetts 02108
Lemon Law information: (617) 727-7780
Arbitration questions: (617) 727-4061

(2) Beginning no later than 60 days after the effective date of these regulations, all new motor vehicles and those used motor vehicles still within the term of protection which are sold or offered for sale in Massachusetts shall include with the ownership manual materials a yellow information sheet in the following form in not smaller than 10 point type:

"LEMON LAW" INFORMATION:

IF YOU HAVE SERIOUS PROBLEMS WITH

THIS VEHICLE

The Massachusetts "Lemon Law," General Laws Chapter 90, Section 7N 1/2 provides protection for consumers who have serious problems with their new vehicle.

UNDER THE LEMON LAW, YOU HAVE A RIGHT TO A REFUND OR REPLACEMENT OF THE VEHICLE IF:

(a) there is a defect(s) which substantially impairs the use, safety or market value of the vehicle, AND

(b) The defect(s) still exists or has recurred after either:

1. three or more repair attempts for the same defect, or

2. being out of service by reason of repair for any combination of defects for a cumulative total of 15 or more business days,

within one year or 15,000 miles (whichever comes first) after original delivery, AND

(c) the manufacturer has been notified of the defect(s) and given one final repair attempt of no more than 7 business days.

IF THE MANUFACTURER DOES NOT REFUND OR REPLACE THE VEHICLE AFTER THESE STANDARDS HAVE BEEN MET, YOU HAVE A RIGHT TO HAVE YOUR CASE ARBITRATED BY THE STATE.

This state-run arbitration is different from any manufacturer-sponsored program to which you may also be entitled. Under the state program, you will be sent a decision within 45 days of when your request for arbitration is accepted.

Under the law, you must request state-run arbitration within 18 months of original delivery of the vehicle.

THIS SHEET PROVIDES ONLY A SUMMARY OF YOUR RIGHTS.

To request arbitration, or to get further information, contact:

Lemon Law Arbitration Program
Executive Office of Consumer Affairs
and Business Regulation
One Ashburton Place
Boston, Massachusetts 02108
Lemon Law information: (617) 727-7780
Arbitration questions: (617) 727-4061

(3) The manufacturer shall be responsible for supplying these notices to dealers. The dealer shall be responsible for placing the notices on the vehicle and with the ownership materials.

11.14 MISCELLANEOUS PROVISIONS

(1) All correspondence by parties to the EOCABR should be directed to the attention of the Lemon Law Arbitration Director.

(2) The EOCABR may from time to time develop internal guidelines for the operation of the Lemon Law program.

(3) Upon a finding of extraordinary circumstances, the EOCABR may, in its sole discretion, waive any of these regulations, if such waiver would be in the public interest, and serve to carry out the purpose or intent of the Lemon Law Arbitration Program.

(4) Situations not covered in these regulations shall be handled by the EOCABR or the arbitrator in an equitable and efficient manner.

(5) The effective date of 201 CMR 11.02(1) shall be retroactive to December 31, 1985.

NEW VEHICLE LEMON LAW

The Massachusetts Lemon Law, M.G.L. Ch. 90 §7N1/2, gives strong protection to consumers who have serious defects in their new cars. Not all problems are covered, however. The law defines a lemon as a new motor vehicle which has a defect or defects that substantially impair the use, market value, or safety of the vehicle, and which have not been repaired after a reasonable number of attempts. Under the law, if a substantial defect(s) still exists or recurs after a reasonable number of repair attempts, the consumer may return the vehicle to the manufacturer for a refund or replacement.

If you have a serious problem with a new vehicle, it is very important that you keep complete and accurate records of all contacts with the manufacturer and dealer, and all repair receipts. You have a right to a dated, itemized bill for any repair work, including warranty repair work, under the Attorney General's Motor Vehicle Regulations (940 CMR 5.05 (9)). Be sure to ask for these bills.

VEHICLES COVERED BY THE LEMON LAW

After January 1, 1984, any buyer of a new car, motorcycle, van or truck for personal or family purposes is covered by the Lemon Law term of protection - one year or 15,000 miles of use by the consumer from the date of original delivery, whichever comes first. "New" includes vehicles purchased after January 1, 1984, and transferred during the one year or 15,000 mile term of protection.

IMPORTANT: The Lemon Law does not cover leased vehicles, auto homes, vehicles built primarily for off-road use or any vehicle used primarily for business purposes.

Defects not included: The Lemon Law does not cover the following:

- o defects which do not substantially impair the vehicle's use, market value or safety;
- o defects caused by owner negligence;
- o defects resulting from accident, or vandalism;
- o defects resulting from attempts to repair the vehicle by a person other than the manufacturer, its agent or authorized dealer; and
- o defects caused by any attempt to substantially modify the vehicle which was not authorized by the manufacturer.

REPAIR ATTEMPTS

Reasonable number of repair attempts: The Lemon Law gives the manufacturer, its agent or authorized dealer a "reasonable number of attempts" to repair the defect(s). A reasonable number of attempts has been allowed if either of the following happens within one year or 15,000 miles (whichever comes first) after delivery:

- o repair is attempted 3 or more times for the same substantial defect, and the problem continues or recurs within the term of protection;

OR

- o repair attempts for any substantial defect or combination of defects total 15 or more business days, not necessarily all at one time.

Final Repair Attempt:

Once the manufacturer or authorized dealer has made a reasonable number of attempts to repair the problem, you must give the manufacturer one final opportunity not to exceed 7 business days to fix any substantial defect. This 7 day period begins when the manufacturer knows or should know that the 3 repair opportunities or 15 days out of service have been met or exceeded, usually on the day of receipt of your final opportunity letter.

The servicing dealer may not necessarily bring it to the attention of the manufacturer when a vehicle reaches the limit for a reasonable number of attempts. For this reason, you should send notification of the final opportunity to repair by certified mail, return receipt requested, to the manufacturer's regional and/or corporate office. (See sample.) Notifying the manufacturer directly by mail and keeping copies of your correspondence is the best way to document your complaint.

The manufacturer may choose not to use this final opportunity to attempt repair. If after the 7 business days, the substantial defect has not been repaired, or has been repaired and recurs, you have the right to a refund or replacement under the Lemon Law.

REPLACEMENT OR REFUND

Replacement: If the manufacturer offers you a replacement vehicle, it must be one which is acceptable to you. You have an unqualified right to reject the vehicle and demand a refund. **However, you cannot reject a refund and demand a replacement.** If you are given a replacement vehicle under the Lemon Law, a new one year or 15,000 mile term of protection for that new car starts from the date of delivery of the replacement vehicle.

Registration and Sales Tax Reimbursement: The manufacturer must reimburse you for any fees for the transfer of registration or any sales tax incurred by you as a result of a replacement under the Lemon Law.

No Refinancing Agreement: If you accept a replacement vehicle, you do not have to enter into any refinancing agreement which would create any financial obligations beyond those implied by the original financing agreement, if through the manufacturer.

Refund: If you choose to get a refund, you will receive the full contract price of the vehicle including all credits and allowances for any trade-in vehicle, less a reasonable allowance for use. For vehicles other than motorcycles, a reasonable allowance for use equals 1/100,000 of the purchase price for every mile on the odometer at the time of return to the manufacturer. The fraction used for motorcycles is 1/25,000.

Finance Charge and Option Reimbursement: When a refund is given under the Lemon Law, the manufacturer must also reimburse you for incidental costs including sales tax, registration fees, finance charges and any cost of options added by an authorized dealer.

NOTE: You have the option of retaining the use of the vehicle returned under the law until you have been given a refund or an acceptable replacement vehicle. Mileage accumulated during this time will be included when calculating the reasonable allowance for use.

Towing and Rental Reimbursement: Whenever a vehicle is replaced or refunded under the Law, the manufacturer must also reimburse the consumer for towing and reasonable rental costs that were a direct result of the vehicle's substantial defect, when towing services or loaner cars were not provided free of charge.

Disclosure of vehicle returned under the law as a lemon: Any vehicle returned to the manufacturer under the Lemon Law cannot be resold in Massachusetts without a clear and conspicuous written disclosure of that fact.

ASSERTING YOUR RIGHTS

If the manufacturer will not refund your money or replace the vehicle, you have several options. You may seek mediation of your complaint through the Attorney General's office, go to arbitration, or go to court. Choose the option best suited to your particular problem.

Arbitration: Arbitration is an inexpensive option for resolving your complaint. Arbitration is a hearing where both the consumer and the manufacturer present evidence about the condition of the vehicle to an impartial person. There are two types of arbitration: state-run and manufacturer-sponsored.

State-run: The state's Lemon Law Arbitration Program hears only Lemon Law cases. To qualify for state-run arbitration, your vehicle must meet the standards outlined in this pamphlet--3 repair attempts for the same substantial defect, OR a cumulative total of 15 business days out of service for repairs of any substantial defect or combination of defects within the law's term of protection. You must also have notified the manufacturer of its final opportunity for repair.

The purpose of a state-run arbitration hearing is to determine whether or not your vehicle qualifies for refund or replacement under the Lemon Law. State-run arbitration is "all or nothing." If the arbitrator determines that your vehicle meets the Lemon Law

standards for refund or replacement, you will be awarded a full refund or replacement. If the arbitrator decides your vehicle is not a "lemon," there will be no award. Although you may have a serious problem, the arbitrator cannot order the manufacturer to make a partial refund, attempt additional repairs, or extend the terms of the express warranty.

Manufacturers are required to submit to state-run arbitration if the Executive Office of Consumer Affairs and Business Regulation receives your Request for Arbitration form **within 18 months of the date of original delivery of the vehicle.** The request must be made on that official form. If you request state-run arbitration after the eighteenth month of possession, you may have your case arbitrated only if the manufacturer voluntarily agrees to participate. You can request state-run arbitration even if you have already used the manufacturer's dispute resolution mechanism.

Decisions are issued within 45 days of acceptance of a request for arbitration and are binding on the manufacturer, unless overturned by a court in an appeal. Manufacturers must comply with decisions issued under the state-run program or file an appeal within 21 days and post a bond equal to the award of the arbitrator, plus an additional $2500 for the consumer's anticipated attorney's fees. Frivolous appeals can result in a judge awarding you double damages.

Manufacturer-sponsored: You may request arbitration for Lemon Law defects, as well as other less serious problems. Under the Lemon Law, a manufacturer cannot require you to submit to its arbitration program, but if you do choose to use it, the panel does not have to apply the Lemon Law standards in issuing its decision. The arbitrator can order partial refunds as well as full ones. Most manufacturers are bound by the decisions of their arbitration mechanisms. If you are dissatisfied with the results of manufacturer-sponsored arbitration, you can request state-run arbitration. For specific information on your manufacturer's dispute resolution program, contact its zone or regional office. NOTE: You can only enforce your rights for a refund or replacement under the Lemon Law through state-run arbitration.

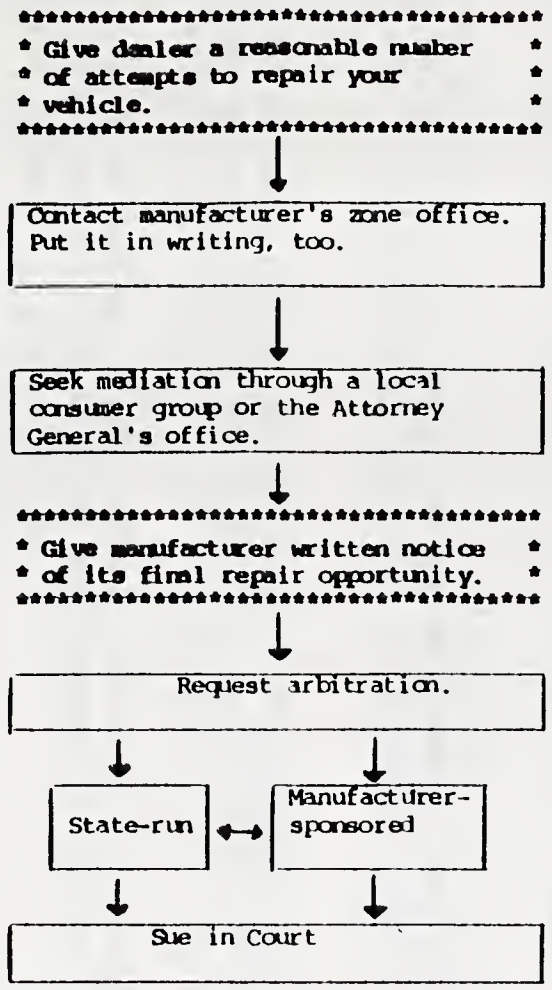
Court: You have the right to proceed to court if the manufacturer refuses to refund your money or replace the vehicle with one acceptable to you, OR if you are not awarded a refund or replacement through arbitration.

If you are considering court action, you should consult an attorney. Failure to comply with the Lemon Law is an unfair or deceptive act under the Massachusetts Consumer Protection Act, Ch. 93A, which may entitle you to double or triple damages, plus court costs and reasonable attorney's fees.

You or your attorney must begin by sending the manufacturer a 30-Day Demand Letter, a special procedural requirement of Chapter 93A, Section 9.

STEPS TO SOLVE NEW CAR PROBLEMS GENERALLY

To qualify for state-run arbitration, or to sue in court under the Lemon Law, you need **ONLY** take the steps indicated in the ***starred*** boxes below..



FOR HELP ...

Information on Your Rights Under the Lemon Law:

Exec. Off. of Consumer Affairs and Business Regulation
One Ashburton Place, Room 1411
Boston, MA 02108 (617) 727-7780

State-Run Arbitration Information/Application Forms:

Lemon Law Arbitration Program
Exec. Off. of Consumer Affairs and Business Regulation
One Ashburton Place, Room 1411
Boston, MA 02108 (617) 727-4061

To File a Complaint Against the Dealer or Manufacturer:

Consumer Protection Division
Department of the Attorney General
One Ashburton Place, 19th Floor
Boston, MA 02108 (617) 727-8400

SAMPLE NOTICE OF FINAL OPPORTUNITY TO REPAIR
KEEP A COPY FOR YOUR RECORDS

Your Address
Your Telephone number
Date

Name of Manufacturer
Manufacturer's Address

Dear Sir or Madam:

I believe that my car is a "lemon" under the Massachusetts Lemon Law (Massachusetts General Laws, Ch. 90, §7N-1/2). I am hereby making a written demand for relief under the Lemon Law and the Massachusetts Consumer Protection Act (Massachusetts General Laws, Ch. 93A, §9).

I purchased a (make, model, year of vehicle) on (date) from (name of dealership) in (city, state). Since I bought the vehicle, I have had to return it to the dealership a total of (number of times the vehicle was returned to an authorized dealer for repairs) times. My vehicle has been out of service for repairs for a total of (total number of business days the vehicle has been out of service being repairel) business days.

My vehicle has been in (authorized dealership) for repairs on the following dates for repair for the following defects:

(Date in/out)	(List problems complained of)
(etc.)	(etc.)

I am having the following problems with my vehicle at this time: (list all problems the vehicle currently has).

Since these defects substantially impair the use, market value or safety of my vehicle, I am hereby allowing you one final opportunity to repair my vehicle. If these repairs are not completed within 7 business days of receipt of this letter, I am entitled to a replacement vehicle acceptable to me or a refund calculated in accordance with the Lemon Law.

Failure to comply with the Lemon Law is a violation of Massachusetts General Laws, Ch. 93A and you may be subject to double or treble damages as well as attorney's fees and court costs if this matter is taken to court.

I look forward to hearing from you soon.

Sincerely,

Your name

Booklet prepared by: Executive Office of Consumer Affairs and Business Regulation

8/86

APPENDIX D

MICHAEL S. DUKAKIS
GOVERNOR

PAULA W. GOLD
SECRETARY

Commonwealth of Massachusetts
Executive Office of Consumer Affairs
and Business Regulation
Lemon Law Arbitration Program
One Ashburton Place, Boston, MA 02108

617 / 727-4061

PLEASE SEND 4 COPIES OF ALL MATERIALS.

REQUEST FOR ARBITRATION INSTRUCTION SHEET

PLEASE READ AND FOLLOW the instructions below and on the reverse side. Failure to do so could result in the rejection of your request for arbitration.

QUALIFICATIONS FOR ARBITRATION

LEMON LAW ARBITRATION IS AN OPTION AVAILABLE FOR CONSUMERS, BUT IT IS NOT FOR EVERYONE. Many people have problems with new cars, but not all new car problems are covered by the Lemon Law. The law only covers those defects that substantially impair the use, market value or safety of the vehicle. To show reduction in market value, for instance, you will have to prove (not just state) that the vehicle is worth at least 10 percent less than it would have been if it were working properly.

Proving that the vehicle is substantially impaired is not enough. You must also show that you gave the dealer or manufacturer a reasonable number of repair attempts to correct the substantial defects. A reasonable number of attempts is defined as either:

a. three or more repair attempts for the same substantial defect, or
b. being out of service by reason of repair of any substantial defect or combination of defects for a cumulative total of 15 or more business days.

The law only covers problems which arise and repair attempts that are undertaken within 12 months or 15,000 miles (whichever comes first) after the vehicle's original delivery to the consumer.

Showing that the defects are substantial and that a reasonable number of repair attempts were allowed is not enough to qualify for arbitration. You must give the MANUFACTURER one final opportunity not to exceed 7 business days to correct the substantial defects.

After all of these conditions have been met, and your car is still substantially impaired, you can apply for a state-run arbitration hearing under the Lemon Law to have your car declared a "lemon." If an impartial arbitrator agrees with you after listening to evidence presented at the hearing by you and by the manufacturer, a refund or replacement will be ordered. Arbitration is an "all or nothing" procedure. You will either get a refund/replacement or you will get nothing.

To be considered a timely request for arbitration, **YOUR APPLICATION MUST BE RECEIVED WITHIN 18 MONTHS OF ORIGINAL DELIVERY OF THE VEHICLE.**

-over-

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3rd printing-200-1-87

SPECIFIC INSTRUCTIONS FOR COMPLETING THE REQUEST FOR ARBITRATION FORM

SECTION I

--Type or print clearly all requested information in this and in succeeding sections.

SECTION II

--The vehicle identification number is a long serial number found on your purchase contract, title, or registration. It is NOT your social security number or your license plate number.

--The date of actual delivery to you is the date you took the vehicle out of the showroom. You must state the month, day, and year. Attach a copy of your purchase contract.

SECTION IV

--This section attempts to determine if this is your first request for arbitration. If it is not, explain why you are re-applying.

SECTION V

--This section will be used to determine the amount of any refund due. Every line represents a different element of cost, expense, or allowance. Do not include the same element of cost in more than one line. For example, let's say the dealer and you agreed to a purchase price of $10,000. In addition, you had the dealer put in a sunroof for an extra $1,000. You traded in your old car and the dealer gave you $4,000 for it. Sales tax on the car purchase was $500. Line a is $6,000 ($10,000-$4,000), Line b is $4,000, Line c is $1,000, Line d is $500, and Line e is $11,500.

--Finance charges paid means the amount of interest paid on your vehicle loan so far.

--If the dealer or manufacturer did not give you a "loaner" car when your car was being fixed, and if you were not reimbursed for towing charges brought about by a substantial defect, include those costs on the appropriate line.

--If you received a rebate from the manufacturer upon purchasing this vehicle, list the amount.

--If you received a settlement from the manufacturer, or an award from another dispute resolution mechanism, and you accepted it, list the amount.

SECTION VI

--Question 3 requires that you enclose a copy of the letter that you sent to the manufacturer giving it the final repair opportunity. If you do not have a copy, or if you notified the manufacturer in some other way, provide an explanation on a separate sheet of paper.

--Question 4a requires you to explain how the defect(s) significantly interferes with your use of the vehicle; how much the value of your vehicle has been reduced; and/or how the defect(s) creates or has the potential to create a substantial safety problem to occupants, others, or to property. Use additional sheets of paper if necessary.

SECTION VII

Be sure to cluster all the same defects or symptoms together, and separate them from other defects. Even if you had several different defects repaired at the same time, list each separately as the example in Section VII demonstrates.

SECTION VIII

On separate sheets of paper, tell us in your own words about the problem you've been experiencing. Please include all requested information.

SECTION IX

Sign the form. Indicate if you want a "documentary hearing," one where you will not be present to offer your evidence in person. We do not recommend this option.

Return the completed form to the address indicated on the form so that it is received within 18 months of original delivery of the vehicle.

If you have any questions about the form or arbitration, please call 727-4061. If you have general questions about the Lemon Law, please call 727-7780.

RFA-1

REQUEST FOR ARBITRATION
MASSACHUSETTS LEMON LAW ARBITRATION PROGRAM

FOR OFFICE USE ONLY

#

Rec

Acc

Inc

Rej

W/D

Acc2

By

SECTION I TYPE OR PRINT ACCORDING TO INSTRUCTION SHEET.

CONSUMER _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

HOME TELPHONE _____ WORK TELEPHONE _____

==========

SECTION II

MANUFACTURER _____ MODEL _____

MODEL YEAR _____ DEALER _____

DEALER'S ADDRESS _____ CITY _____ ZIP _____

VEHICLE I.D. NUMBER _____ PURCHASE DATE _____

DATE OF ACTUAL DELIVERY TO YOU _____ MILEAGE AT TIME OF DELIVERY _____

ODOMETER READING NOW _____ VEHICLE WAS PURCHASED: NEW ____ USED ____ DEMONSTRATOR ____

If used, complete the following: Previous owner's name _____

Previous owner's address _____

Actual date of delivery to original owner _____

Dealer who sold vehicle originally _____ CITY _____

==========

SECTION III

1. PRIMARY VEHICLE USE: Personal use _____ Business use _____

2. IS THE VEHICLE BUILT PRIMARILY FOR OFF-ROAD USE?. . . . . .Yes___ No___

3. DO YOU STILL OWN THE VEHICLE?. . . . . Yes___ No___

4. IS ANY DEFECT YOU ARE COMPLAINING ABOUT THE RESULT OF:

   a. Damage caused by vandalism?. . . . . .Yes___ No___
   b. Damage caused by accident(other than one caused by the defect)?. . .Yes___ No___
   c. Damage caused by attempts to repair the vehicle by a person other than the manufacturer, its agent, or authorized dealer?. . . . . .Yes___ No___
   d. Damage caused by any attempt to substantially modify the vehicle without the manufacturer's permission? . . . . . .Yes___ No___
   e. Your own negligence? . . . . . .Yes___ No___

==========

SECTION IV

1. IS THIS YOUR FIRST REQUEST FOR STATE-RUN ARBITRATION FOR THIS VEHICLE?. .Yes___ No___

   a. If no, was previous application withdrawn? Yes___ No___ Rejected? Yes__ No__

   b. If neither withdrawn nor denied, what happened? _____

   _____

   c. Did you have a hearing? Yes___ No___ Case number _____
   d. If you had a hearing and lost, explain how your circumstances have changed to now qualify your vehicle for refund/replacement (use a separate sheet of paper).

SECTION V SEE INSTRUCTIONS. DO NOT INCLUDE THE SAME EXPENSES ON MORE THAN ONE LINE.

a. PURCHASE PRICE OF CAR _____
(after deducting trade-in allowance)

b. TRADE-IN VALUE ALLOWED _____

c. OPTIONS ADDED BY AUTHORIZED DEALER _____
(if not included above)

d. SALES TAX _____

e. **TOTAL PRICE** (a+b+c+d) _____

REGISTRATION FEES _____

FINANCE CHARGES PAID TO DATE _____

UNREIMBURSED TOWING/
RENTAL CHARGES _____

OTHER INCIDENTAL COSTS _____

REBATES RECEIVED _____

SETTLEMENTS OR AWARDS RECEIVED _____

SECTION VI

1. Has the manufacturer or its authorized dealer(s) attempted to repair the SAME substantial defect(s) at least three times but it recurred or continued during the term of protection (one year or 15,000 miles, whichever came first)? Yes___ No___

2. Has the vehicle been out of service for repair of a substantial defect(s) for a cumulative total of 15 or more business days during the term of protection (one year or 15,000 miles, whichever came first)? Yes___ No___ Total # of business days _____

3. After the three repair attempts or the 15 business days limit described above was met or exceeded, did you notify the MANUFACTURER and offer it one final repair opportunity not to exceed 7 business days? Yes___ No___ (Enclose a copy of that notification.)

   a. If yes, on what date did you notify the manufacturer? _____
   b. Did the manufacturer use that final opportunity to attempt repairs? Yes___ No___

4. Do you believe that the defect(s) in your vehicle substantially impairs its:
   Use? Yes No **Market Value?** Yes No **Safety?** Yes No

4a. For each "yes" you checked above, explain exactly how the defect(s) has SUBSTANTIALLY IMPAIRED the vehicle's USE, MARKET VALUE, and/or SAFETY.

SECTION VII

List below only those defects that the manufacturer or authorized dealer attempted to repair which separately or in combination substantially impair the use, market value, or safety of your vehicle. List only those attempted repairs which occurred during the first 12 months or 15,000 miles, whichever came first. LIST ALL ATTEMPTS TO REPAIR THE SAME DEFECT TOGETHER.

DEFECT OR SYMPTOM	DATE IN	DATE OUT	# OF BUSINESS DAYS IN SHOP	ODOMETER READING
example:				
ENGINE SEIZES	March 3, '86	March 6, '86	4	001000
ENGINE SEIZES	April 9, '86	April 9, '86	1	001123
BRAKES FAIL	March 3, '86	March 6, '86	4	001000

SECTION VIII

On a separate sheet(s) of paper, please type or print a description of the problems you have had with your motor vehicle, starting with the first repair attempt, and continuing in order until the most recent attempt. For EACH repair attempt, be sure to indicate:

- What the symptom or defect was,
- Whether it was repaired or not,
- Whether the repair was performed by the dealer or manufacturer,
- What dates the vehicle was in the shop,
- How many business days the vehicle was in the shop,
- What the odometer reading was.

Indicate what the manufacturer did or did not accomplish during its final repair attempt. Indicate which problems currently exist.

==========

SECTION IX

I HEREBY REQUEST THAT THE STATE ARBITRATE MY NEW CAR MOTOR VEHICLE CASE. I CERTIFY THAT THE MANUFACTURER HAS NOT YET GIVEN ME A REFUND OR REPLACEMENT, AND THAT ALL STATEMENTS MADE IN CONNECTION WITH THIS REQUEST FOR ARBITRATION ARE TRUE TO THE BEST OF MY KNOWLEDGE. I UNDERSTAND THAT THIS DOCUMENT AND ITS ATTACHMENTS ARE PUBLIC RECORDS.

SIGNED _____ DATE _____

If an attorney or other person is going to represent you, fill in below:

NAME _____ FIRM _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____ TELEPHONE _____

/ /CHECK HERE if you do not wish to attend an oral hearing but rather prefer to present your evidence in writing only. **NOTE:** The manufacturer is permitted to testify orally nonetheless.

==========

DON'T FORGET TO INCLUDE:

- A copy of final repair opportunity letter to manufacturer or its substitute.
- The Section VIII description of your problem.
- A copy of the motor vehicle purchase contract.
- Do NOT include copies of work orders. Bring them to the hearing.
- Do NOT send originals or your only copy of any documents.

RETURN THIS COMPLETED REQUEST FOR ARBITRATION FORM AND ALL ATTACHMENTS TO:

Lemon Law Arbitration Program
Executive Office of Consumer Affairs and Business Regulation
One Ashburton Place, Room 1411
Boston, MA 02108
617-727-4061

==========FOR OFFICE USE ONLY==========

PLEASE SEND 4 COPIES OF ALL MATERIALS.

APPENDIX E

86-3

MASSACHUSETTS LEMON LAW ARBITRATION PROGRAM
as administered by the American Arbitration Association

FORM DECISION

CONSUMER: _____

_____

_____

VEHICLE _____

VIN# _____

MANUFACTURER: _____

_____

_____

_____

CASE# _____

AAA# 11-177- _____

JURISDICTION

Since the consumer's Request for Arbitration was received on _____ which is within 18 months of _____, the original delivery date of the vehicle by a Massachusetts dealer, the Lemon Law Arbitration Program has jurisdiction to hear the case. (201 CMR 11.02). A hearing was held on _____.

SUMMARY OF EVIDENCE

Consumer:

Manufacturer:

SUMMARY OF ISSUES RAISED

1. Whether the vehicle meets the standards for refund/replacement under M.G.L. c.90 §7N1/2.
2.
3.
4.

FINDING OF FACTS

During the term of protection repairs (WERE)(WERE NOT) attempted at least three times for the same defect.

During the term of protection, the vehicle (WAS)(WAS NOT) out of service by reason of repair of a defect or combination of defects for a cumulative total of at least 15 business days.

The defect(s) for which repair was attempted at least three times OR for at least 15 business days, namely, _____

_____

_____,

(DO)(DO NOT) substantially impair the vehicle's use, market value, or safety.

After the aforementioned repair attempts, the manufacturer was notified of its final repair opportunity. The manufacturer (DID)(DID NOT) use its final attempt.

After the manufacturer's final 7 business day repair opportunity expired, the vehicle (WAS)(WAS NOT) substantially impaired. There was substantial impairment of (USE), (MARKET VALUE), (SAFETY), (NEITHER USE, MARKET VALUE, NOR SAFETY) because:

_____

_____

_____

CONCLUSIONS OF LAW

The defect(s) complained of during the term of protection (DID)(DID NOT) breach the express and/or implied warranties.

Since a reasonable number of repair attempts (WAS)(WAS NOT) allowed, and the defects complained of (DO)(DO NOT) substantially impair the vehicle's use, market value, or safety, and all other requirements of c.90 §7N1/2 (HAVE)(HAVE NOT) been met, I conclude that the vehicle (DOES)(DOES NOT) meet the standards for replacement/refund.

CALCULATION OF AWARD

+ _____	Contract price of vehicle **after deducting** trade-in allowance	Total Contract Price
+ _____	Trade-in allowance	
+ _____	Dealer added options not previously included	
+ _____	Sales tax	
+ _____	Registration fees	
+ _____	Finance charges as of _____	
+ _____	*Unreimbursed towing costs	
+ _____	*Unreimbursed rental costs	
+ _____	Incidental costs #1 _____	
+ _____	Incidental costs #2 _____	
- _____	Use allowance as of _____ (miles used: _____)	
	Current miles _____ minus beginning miles _____ =	
- _____	Rebates received	
- _____	*Settlements received	
- _____	Other deductions _____	
_____	Other: _____	
_____	TOTAL AWARD	

ORDER

/___/ I order the manufacturer to accept return of the vehicle and, to either replace the vehicle and refund the total of the *'d items above plus any costs for the transfer of registration and sales tax on the replacement vehicle, or refund $_____; (plus or minus continuing costs and allowances until actual date of vehicle return) within 21 days of the mailing date of

/___/ this decision indicated below.

/___/ the previous summary decision.

The consumer may, however, reject any replacement and demand the refund stated above.

Signed _____ Date _____

Arbitrator _____ Mailing Date by AAA hdqtrs _____

NOTICE: Requests for technical corrections to this decision must be received by the arbitration firm within 14 days of the mailing date of this decision. Manufacturers who wish to appeal must do so in court within 21 days of the mailing date of this decision or the summary decision, whichever was mailed first. Consumers dissatisfied with this decision may sue the manufacturer in court under c.93A.

APPENDIX F

LEMON INDEX

(NUMBER OF CASES RECEIVED COMPARED TO MARKET SHARE)

+2359%	YUGO →	
+209%	ALFA ROMEO	
+103%	AMC/JEEP/RENAULT	
+93%	PEUGEOT	
+76%	PORSCHE	
+73%	MITSUBISHI	
+19%	GM	GREATER NUMBER OF CASES
+8%	FORD	
	AVERAGE	
-7%	SAAB	FEWER NUMBER OF CASES
-15%	CHRYSLER	
-25%	AUDI	
-44%	SUBARU	
-51%	ISUZU	
-54%	NISSAN	
-55%	TOYOTA	
-65%	MAZDA	
-70%	MERCEDES BENZ	
-74%	HYUNDAI	
-85%	VOLVO	
-85%	VOLKSWAGEN	
-90%	HONDA	
-100%	BMW	
-100%	JAGUAR	

NOTE: LEMON INDEX INDICATES WHETHER THE NUMBER OF COMPLAINTS RECEIVED AGAINST A MANUFACTURER IS GREATER THAN OR LESS THAN ITS MARKET SHARE OF NEW CARS AND TRUCKS. A MANUFACTURER WITH A MARKET SHARE OF 10%, BUT WITH 15% OF THE LEMON LAW CASES WOULD HAVE A LEMON INDEX OF +50%. LIKEWISE, IF THE SAME MANUFACTURER HAD ONLY 5% OF THE CASES, ITS LEMON INDEX WOULD BE -50%.

LEMON LAW ARBITRATION CASELOAD VS. MARKET SHARE (1986)
(CARS AND TRUCKS)

	LEMON INDEX	CASES RECEIVED #	CASES RECEIVED %	MARKET SHARE #	MARKET SHARE %
ROLLS ROYCE		1	0.2%	9	0.00%
MASERATI		1	0.2%	11	0.01%
YUGO	2359%	30	5.0%	422	0.20%
ALFA ROMEO	209%	1	0.2%	112	0.05%
AMC/JEEP/RENAULT	103%	29	4.8%	4,949	2.36%
PEUGEOT	93%	2	0.3%	358	0.17%
PORSCHE	76%	2	0.3%	393	0.19%
MITSUBISHI	73%	6	1.0%	1,203	0.57%
GM BUICK	61%	49	8.1%	10,539	5.04%
GM PONTIAC	40%	42	6.9%	10,342	4.94%
GMC TRUCK	27%	14	2.3%	3,826	1.83%
GMC TOTAL	19%	277	45.8%	80,309	38.37%
GM CHEVROLET	10%	123	20.3%	38,645	18.47%
FORD	8%	137	22.6%	43,792	20.92%
GM OLDSMOBILE	5%	43	7.1%	14,121	6.75%
SAAB	-7%	4	0.7%	1,484	0.71%
CHRYSLER	-15%	60	9.9%	24,444	11.68%
AUDI	-25%	3	0.5%	1,375	0.66%
GM CADILLAC	-27%	6	1.0%	2,836	1.36%
SUBARU	-44%	9	1.5%	5,559	2.66%
ISUZU	-51%	2	0.3%	1,411	0.67%
NISSAN	-54%	11	1.8%	8,212	3.92%
TOYOTA	-55%	15	2.5%	11,573	5.53%
MAZDA	-65%	4	0.7%	3,921	1.87%
MERCEDES BENZ	-70%	1	0.2%	1,149	0.55%
HYUNDAI	-74%	2	0.3%	2,698	1.29%
YAMAHA		1	0.2%	(1,368)	
VOLVO	-85%	1	0.2%	2,266	1.08%
VOLKSWAGEN	-85%	2	0.3%	4,722	2.26%
HONDA	-90%	2	0.3%	7,233	3.46%
BMW	-100%	0	0.0%	1,275	0.61%
JAGUAR	-100%	0	0.0%	293	0.14%
SUZUKI		0	0.0%	66	0.03%
OTHER MISC		0	0.0%	24	0.01%
FERRARI		0	0.0%	15	0.01%
BERTONE		0	0.0%	6	0.00%
TOTAL		605	100%	209,284	100%

NOTE: LEMON INDEX IS PERCENT OF CASES RECEIVED DIVIDED BY % MARKET SHARE, FOR VEHICLES WITH AT LEAST 100 REGISTRATIONS IN MASSACHUSETTS FROM JANUARY 1 TO JUNE 30, 1986 ACCORDING TO R.L. POLK & COMPANY. THE RESULTING PERCENTAGE INDICATES VARIANCE OF CASELOAD FROM MARKET SHARE.

MARKET SHARE FIGURES ARE FOR NEW CARS AND TRUCKS UNDER 10,000 LBS.

CASES RECEIVED ARE THOSE REQUESTS FOR ARBITRATION RECEIVED FROM APRIL THROUGH DECEMBER 1986.

LEMON LAW ARBITRATION CASE DISPOSITION*
1986

	CASES WITHDRAWN		CASES HEARD		CASE DECISIONS	
	#	%	#	%	FOR CONSUMER	FOR MFR
ROLLS ROYCE	0	0%	1	0%	0%	100%
MASERATI	1	100%	0	0%	0%	0%
YUGO	4	13%	17	6%	76%	24%
ISUZU	0	0%	2	1%	50%	50%
ALFA ROMEO	0	0%	0	0%	0%	0%
MITSUBISHI	2	33%	3	1%	67%	33%
AMC/JEEP/RENAULT	4	14%	16	6%	69%	31%
PEUGEOT	0	0%	1	0%	0%	100%
PORSCHE	0	0%	2	1%	50%	50%
GM BUICK	10	20%	23	9%	57%	43%
GM CHEVROLET	30	24%	53	20%	60%	40%
FORD	42	31%	57	21%	77%	23%
GM PONTIAC	8	19%	22	8%	77%	23%
GMC TOTAL	114	41%	117	44%	60%	40%
CHRYSLER	0	0%	26	10%	73%	27%
GM OLDSMOBILE	13	30%	13	5%	38%	62%
SAAB	1	25%	2	1%	100%	0%
AUDI	0	0%	0	0%	0%	0%
GM CADILLAC	1	17%	3	1%	33%	67%
TOYOTA	6	40%	5	2%	20%	80%
SUBARU	1	11%	4	1%	75%	25%
NISSAN	0	0%	9	3%	67%	33%
MAZDA	0	0%	4	1%	75%	25%
MERCEDES BENZ	1	100%	0	0%	0%	0%
GMC TRUCK	6	43%	3	1%	67%	33%
HYUNDAI	0	0%	0	0%	0%	0%
YAMAHA	0	0%	1	0%	100%	0%
VOLVO	1	100%	0	0%	0%	0%
VOLKSWAGEN	0	0%	1	0%	100%	0%
HONDA	2	100%	0	0%	0%	0%
BMW						
JAGUAR						
FERRARI						
BERTONE						
TOTAL	133		268		66%	34%

* IN ADDITION TO CASES WITHDRAWN, OTHER CASES ARE AWAITING HEARINGS, OR PENDING, AWAITING FURTHER DOCUMENTATION.

Commonwealth of Massachusetts
Executive Office of Consumer Affairs
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Lemon Law Arbitration Program
One Ashburton Place, Boston, MA 02108

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MICHAEL S. DUKAKIS
GOVERNOR

PAULA W. GOLD
SECRETARY

ADVISORY OPINION # 1

NOTE: Advisory opinions are the intrepretations of the Executive Office of Consumer Affairs and Business Regulation pursuant to M.G.L. c.90, s. 7N1/2. These opinions are issued in answer to general questions that may arise in the implementation of the Lemon Law Arbitration Program. Advisory opinions are issued without reference to the facts of any specific case.

The following issue has arisen in the interpretation of the New Car Lemon Law and/or its regulations:

Does the fact that the consumer's vehicle was repaired after the seventh business day of the manufacturer's final repair opportunity prevent the consumer from qualifying for a refund or replacement under the New Car Lemon Law?

It is the opinion of the Executive Office of Consumer Affairs and Business Regulation that:

It is irrelevant whether the defect(s) is repaired at some point beyond the seventh business day of the manufacturer's final repair attempt.

The statute states that the period for the manufacturer's final opportunity is "not to exceed seven business days." Those seven business days begin "on the day the manufacturer first knows or should have known that the [three attempt or 15 busniess day] limits . . . have been met or exceeded."

(M.G.L. c.90, s. 7N1/2(4))

According to the statute, this seven business day period can only be extended when repair services "are not available to the consumer as a direct result of a war, invasion, fire, flood or other natural disaster [or] . . . as a direct result of a strike."

(M.G.L. c.90, s. 7N1/2(4))

In determining whether a vehicle meets the statute's standards for refund or replacement, the arbitrator should consider whether the vehicle was substantially impaired at the end of the seven business days.

The above opinion should not be construed to govern other questions concerning this issue or related issues.

June 16, 1986
DATE

JoAnne Aylward
JoAnne C. Aylward
Director, Lemon Law Arbitration

Commonwealth of Massachusetts
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MICHAEL S. DUKAKIS
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PAULA W. GOLD
SECRETARY

ADVISORY OPINION #2

NOTE: Advisory opinions are interpretations by the Executive Office of Consumer Affairs and Business Regulation pursuant to M.G.L. c.90 §7N1/2 and 201 CMR 11.00. These opinions are issued in answer to general questions that may arise in the implementation of the Lemon Law Arbitration Program. Advisory opinions are issued without reference to the facts of any specific case.

The following issue has arisen in the interpretation of the New Car Lemon Law and/or its regulations:

What constitutes a "replacement car" under the Lemon Law?

It is the opinion of the Executive Office of Consumer Affairs and Business Regulation that:

When a manufacturer replaces a car under the New Car Lemon Law, the goal is to make the consumer whole, as if the vehicle originally purchased had been free of serious defects and worked out to the satisfaction of the consumer.

To accomplish this end, in the case of a consumer who bought a new vehicle (one other than a demonstrator, or a used car purchased while it was still within the term of protection), the manufacturer should be supplying at no charge to the consumer, a new car (no mileage beyond normal testing) which is the same model and model year as the car which was determined to be a "lemon." The car should be similarly equipped as the original. In the event the same model and/or model year is not available, the manufacturer should provide at no charge a comparable new car, even if it is of a subsequent model year.

The consumer is also entitled to reimbursement for fees for transfer of registration, sales tax on the replacement car, unreimbursed towing charges, and unreimbursed costs of alternative transportation. A previous settlement or award may be deducted, but there is no use allowance deduction.

The manufacturer may only charge the consumer additional money if despite the existence of an identical or comparable vehicle, the consumer desires to "trade-up" to a more expensive model or wishes additional options not found on the original vehicle.

In the case of a demonstrator or used car, the manufacturer must follow the same rules except that the replacement may be a used car with mileage on the odometer up to, but not exceeding the mileage of the original vehicle when delivered originally to the consumer.

The legal basis for saying that the replacement car has to be generally "new," comes from the definition of "term of protection" which explicitly gives new cars a term of protection of one year or 15,000 miles. It goes on to give the same term of protection to replacement cars, which can only make sense if the replacement car is likewise new. The law could not have intended, for example, that a manufacturer replace a car with one which has 10,000 miles on it, and give protection on that car until it reaches 25,000 miles.

Additionally, there is language in the statute which forbids a manufacturer who replaces a vehicle from requiring the consumer to enter into a financing agreement beyond the terms implied in the original financing agreement. This could be construed to indicate the legislative intent that the consumer not be made to pay more for a replacement.

The law is clear as to what deductions or allowances are permitted in the case of a refund, versus those permitted in the case of a replacement. The reasonable allowance for use is contained in the phrase which describes calculation of a refund, and is not contained in any phrase describing calculation of replacement costs.

With respect to the issue of not charging additional for a subsequent model year, it is the feeling of this office that it is through no fault of the consumer that a replacement car of like-kind is not available. If a manufacturer chooses not to set aside x number of vehicles for replacement purposes, the consumer should not be made to pay extra because of that manufacturer's business decision.

The above opinion should not be construed to govern other questions concerning this issue or related issues.

Date June 30, 1986

Edgar Dworsky
Director of Consumer Education

MICHAEL S. DUKAKIS
GOVERNOR
PAULA W. GOLD
SECRETARY

Commonwealth of Massachusetts
Executive Office of Consumer Affairs
and Business Regulation
Lemon Law Arbitration Program
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ADVISORY OPINION #3

NOTE: Advisory opinions are interpretations by the Executive Office of Consumer Affairs and Business Regulation pursuant to M.G.L. c.90 §7N1/2 and 201 CMR 11.00. These opinions are issued in answer to general questions that may arise in the implementation of the Lemon Law Arbitration Program. Advisory opinions are issued without reference to the facts of any specific case.

The following issue has arisen in the interpretation of the New Car Lemon Law and/or its regulations:

If an arbitrator finds for the consumer, is it the manufacturer's option or the consumer's option to choose replacment or refund?

It is the opinion of the Executive Office of Consumer Affairs and Business Regulation that:

It is the manufacturer's obligation to either replace the vehicle (in accordance with Advisory Opinion #2), or to refund the amount stated in the arbitrator's decision. A consumer, however, has the unqualified right to reject the manufacturer's offer of replacement, and demand a refund. The consumer does not have the right to demand a replacement under the Lemon Law.

It was brought to this office's attention that the statute (c.90 §7N1/2) and the regulations (201 CMR 11.10) were in conflict on this specific point. The statute provided refunds or replacement with a limited buyer's option as indicated above, but the regulation provided for a fuller buyer's option as to choice of refund or replacement.

In order to read both the statute and the regulation in harmony, we now interpret the New Car Lemon Law and its regulations to provide a refund at the consumer's option, but it is not the consumer's option to reject a refund and demand a replacement.

The above opinion should not be construed to govern other questions concerning this issue or related issues.

June 30, 1986
Date

Edgar Dworsky
Director of Consumer Education

MICHAEL S. DUKAKIS
GOVERNOR
PAULA W. GOLD
SECRETARY

Commonwealth of Massachusetts
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ADVISORY OPINION #4

NOTE: Advisory opinions are interpretations by the Executive Office of Consumer Affairs and Business Regulation pursuant to M.G.L. c.90 §7N1/2 and 201 CMR 11.00. These opinions are issued in answer to general questions that may arise in the implementation of the Lemon Law Arbitration Program. Advisory opinions are issued without reference to the facts of any specific case.

The following issue has arisen in the interpretation of the New Car Lemon Law and/or its regulations:

Must the consumer allow the manufacturer a view of the motor vehicle after requesting arbitration but prior to the hearing?

It is the opinion of the Executive Office of Consumer Affairs and Business Regulation that:

The consumer must allow the manufacturer a view of the motor vehicle prior to the hearing subject to the conditions below:

1. The purpose of a "view" is only to allow the manufacturer to better prepare its case by observing the current condition of the vehicle. The view is not a repair attempt, and no repairs or adjustments are to be made.

2. The manufacturer may only observe the condition of the vehicle, just as a consumer does . . . by sight, sound, feel or smell. The manufacturer may look under the hood, at the underside of the car, or at any other part of the car that is viewable without any disassembly of parts. No tools of any sort may be used. The manufacturer may also test drive the vehicle in the consumer's presence.

3. The view must be requested as "other information" under the discovery regulations, 201 CMR 11.08, and is subject to the time limits set forth therein.

4. The view must be accomplished at the consumer's convenience, in the consumer's presence (unless the consumer agrees otherwise), and at the manufacturer's expense, if any.

5. The manufacturer may not use the opportunity afforded by a view to harass, intimidate, mislead, pressure, persuade or otherwise convince the consumer to agree to another repair attempt, or to withdraw or modify the consumer's request for arbitration.

Because there exists a potential for abuse in allowing a view, this office reserves the right to rescind or modify this opinion should circumstances warrant it.

The above opinion should not be construed to govern other questions concerning this issue or related issues.

June 30, 1986
Date

Edgar Dworsky
Director of Consumer Education

MICHAEL S. DUKAKIS
GOVERNOR

PAULA W. GOLD
SECRETARY

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ADVISORY OPINION #5

NOTE: Advisory opinions are interpretations by the Executive Office of Consumer Affairs and Business Regulation pursuant to M.G.L. c.90 §7N1/2 and 201 CMR 11.00. These opinions are issued in answer to general questions that may arise in the implementation of the Lemon Law Arbitration Program. Advisory opinions are issued without reference to the facts of any specific case.

The following issue has arisen in the interpretation of the New Car Lemon Law and/or its regulations:

Can a consumer or manufacturer request to reschedule a hearing for any reason?

It is the opinion of the Executive Office of Consumer Affairs and Business Regulation that:

A party must offer the arbitration firm an acceptable good cause reason to request rescheduling prior to the day of the hearing.

According to 201 CMR 11.05, a party is allowed only one request to reschedule. However, because nearly 50% of parties have now presented requests to reschedule thereby threatening the program's legislative mandate of deciding cases within 45 days of acceptance, we are invoking our powers under 201 CMR 11.14(2), (3) to require a showing of "good cause" by the party requesting to reschedule.

If the arbitration firm does not accept a rescheduling request, the party may either attend the hearing as scheduled or accept a default without good cause.

The above opinion should not be construed to govern other questions concerning this issue or related issues.

Dec 30 1986
Date

Edgar Dworsky
Director of Consumer Education

MICHAEL S. DUKAKIS
GOVERNOR

PAULA W. GOLD
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ADVISORY OPINION #6

NOTE: Advisory opinions are interpretations by the Executive Office of Consumer Affairs and Business Regulation pursuant to M.G.L. c.90 §7N1/2 and 201 CMR 11.00. These opinions are issued in answer to general questions that may arise in the implementation of the Lemon Law Arbitration Program. Advisory opinions are issued without reference to the facts of any specific case.

The following issue has arisen in the interpretation of the New Car Lemon Law and/or its regulations:

Does the fact that a consumer has already filed a lawsuit against the manufacturer bar the consumer from participating in the Lemon Law Arbitration Program?

It is the opinion of the Executive Office of Consumer Affairs and Business Regulation that:

There are no bars to participation in arbitration other than the timeliness of the request, and the other factors enumerated in 201 CMR 11.02. In fact, 201 CMR 11.12(1) explicitly provides that "participation in any other arbitration or dispute resolution mechanism shall not affect eligibility for state-certified new car arbitration."

The statute itself lists no exceptions other than the 18-month time limit.

The above opinion should not be construed to govern other questions concerning this issue or related issues.

July 16, 1984
Date

Edgar Dworsky
Director of Consumer Education

Commonwealth of Massachusetts
Executive Office of Consumer Affairs
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MICHAEL S. DUKAKIS
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PAULA W. GOLD
SECRETARY

ADVISORY OPINION #7

NOTE: Advisory opinions are interpretations by the Executive Office of Consumer Affairs and Business Regulation pursuant to M.G.L. c.90 §7N1/2 and 201 CMR 11.00. These opinions are issued in answer to general questions that may arise in the implementation of the Lemon Law Arbitration Program. Advisory opinions are issued without reference to the facts of any specific case.

The following issue has arisen in the interpretation of the New Car Lemon Law and/or its regulations:

What constitutes a "business day"?

It is the opinion of the Executive Office of Consumer Affairs and Business Regulation that:

Chapter 90 section 7N 1/2 defines business day as "any day during which the service departments of authorized dealers of the manufacturer of the motor vehicle are normally open for business."

It is clear from the definition that all business day references are to the business day of the dealer and not the business day of the manufacturer. Hence, if the service department of the dealer is open on Saturday, that is counted as a business day. Similarly, if the manufacturer's office is closed for vacation, but the dealer's service department is open, any such days are countable as business days.

Business days are counted in two situations when determining compliance with: the "15 business days out of service" rule, and the manufacturer's "final 7 business day attempt." According to the statute, these periods are only extended as a direct result of "war, invasion, fire, flood, other natural disaster, or strike." There are no extensions because the dealer is "waiting for parts" or the "manufacturer's office is closed."

The statute uses "day" as opposed to "business day" when determining whether awards/appeals are made within 21 days. As such, "day" refers to "calendar day," and there are no statutory extensions of the 21 day period.

The above opinion should not be construed to govern other questions concerning this issue or related issues.

Dec 31, 1986
Date

Edgar Dworsky
Director of Consumer Education

APPENDIX H

ISSUES OF INTERPRETATION OF THE LAW

DETERMINING WHAT CONSTITUTES A LEMON

What Constitutes a Defect?

Some Lemon Law cases have involved specific disputes concerning what actually constitutes a defect. The statute defines a problem covered by the Lemon Law as a nonconformity--any specific or generic defect or malfunction, or any combination of defects or malfunctions which substantially impairs use, market value, or safety. Consumers and manufacturers have disputed whether a symptom which may have more than one cause is a defect. The EOCABR feels that a "nonconformity" can be a symptom under the statute. This is because consumers may not know the cause of a defect, but only the symptom. One such common symptom is stalling. A consumer may argue that his four repair attempts were all for the same symptom--stalling--while the manufacturer argues that there were not three repair attempts for the same defect, because two attempts were for stalling which resulted from a carburetor problem, and the other two attempts were for stalling related to the starter. Under the EOCABR interpretation, there would be four attempts for the same defect--stalling.

What Constitutes a Repair Attempt?

Also at issue during arbitration are disputes over what constitutes a repair attempt. Generally, an attempt is any time a consumer turns a vehicle over to an authorized dealer or the manufacturer and requests repairs, whether or not the defect complained of manifests itself or is actually worked on. For

example, a consumer may bring his vehicle to the dealer complaining of a surging problem, and the problem may not emerge during test drives or other diagnostic techniques employed by the service department. This would constitute a repair attempt even though surging was not evident to the service department.

Similarly, the consumer may return to the dealer or manufacturer at another time for the same problem. The service department acknowledges the surging problem and orders a part for the vehicle for repairs. The vehicle remains on the dealer/ manufacturer lot for five days, and no work is performed. The vehicle is returned to the consumer who is instructed to return the vehicle when the part is received by the dealer. Those five days would constitute a repair attempt or count as days out of service under the Lemon Law.

Dealerships usually charge manufacturers for work done under warranty. However, in some cases, consumers have claimed repairs and have copies of work orders from an authorized dealer, and the manufacturer testifies that it was never billed under the warranty and that the repair does not go toward establishing a reasonable number of attempts under the Lemon Law. Any repair performed for a substantial defect by or on behalf of an authorized dealer or manufacturer constitutes a repair attempt under the Lemon Law. It is irrelevant whether the dealer charged the manufacturer under a warranty agreement.

Manufacturer's Final Repair Opportunity

The Lemon Law requirement of a final opportunity for repair is frequently debated at hearings and has prompted questions from consumers, manufacturers, and arbitrators in many cases.

The statute allows the manufacturer one additional opportunity for repair after it has had a reasonable number of attempts to repair a defect (3 attempts or 15 business days). This "last chance" repair cannot exceed seven business days and begins when the manufacturer first knows or should have known that the reasonable number of attempts as defined in the statute has been met or exceeded. For their case to be accepted for arbitration, consumers must state that the manufacturer has had its final repair opportunity.

Two key points concerning this issue are: 1) It is the manufacturer's, not the dealer's, final chance, even though in most cases, repairs will have been performed by the dealer at the manufacturer's request. Under the statute, the manufacturer is solely liable for refunding a consumer's money or offering a replacement vehicle, and as such, the manufacturer is afforded the final repair opportunity, not the dealer; 2) The manufacturer may or may not take advantage of its last chance, but it must act within the seven business days if it intends to attempt repair. If the seven business days end without repair being attempted or completed and the vehicle is still substantially impaired, the consumer is entitled to a refund or replacement.

Although the final repair opportunity is a crucial issue for manufacturers, communication between the dealer and manufacturer may not be organized or sophisticated enough to provide for notification when a vehicle reaches the limits on Lemon Law repairs. The EOCABR advises consumers to notify the manufacturer directly of a final repair opportunity, in writing, prior to filing for Lemon Law arbitration, despite the fact that the the statute prohibits the manufacturer from imposing any such requirement of explicit notice.

Manufacturers have argued that they have not had a final opportunity in some cases where consumers have not given them direct notice. Consumers have countered with arguments that, after several repairs, a manufacturer "should have known" more than a reasonable number of repair attempts had been taken, and the manufacturer could have affirmatively asked for the final opportunity but failed to do so. Arbitrators have in fact ruled in some of these cases that the manufacturer should have known that the repair limits had been reached.

The arbitration regulations specifically try to provide for instances in which a final opportunity may not have been given directly. The regulation, 201 CMR 11.04(4), states that the final opportunity will begin in such cases when the manufacturer is notified that the consumer's case has been accepted for arbitration. Thus, in cases where the final opportunity is disputed, the manufacturer has a chance to ask for that repair opportunity prior to the hearing.

Even in cases where letters offering the final opportunity have been sent directly to the person designated by the manufacturer to receive Lemon Law notices, one manufacturer has argued that it was not given sufficient notice because the letters were sent to the corporate office and not to the specific manufacturing division for the particular model involved. Under the Lemon Law, the burden is on the manufacturer to have an effective referral system to track these types of complaints. Consumers are not, and cannot be expected to be, knowledgeable about the structure of the manufacturer's organization.

As provided in the statute, the final repair opportunity can be no more than a seven business-day period. When a consumer notifies the manufacturer directly, either in person, by phone or by mail, the seven business days begin on the day the manufacturer receives the notice. The statute is very strict concerning the time allowed for repair. Repairs must not only be attempted but completed within the seven business days. Manufacturers have argued that the final repair was "timely" and performed as quickly as possible in cases where the defect was actually fixed, but repairs took longer than seven business days. Manufacturers have also testified that when the vehicle is still substantially impaired after the final opportunity expires, but the defect is eventually fixed in a subsequent repair attempt, that the consumer is not eligible for a refund or replacement under the Lemon Law. It is irrelevant whether the defect is repaired at some point beyond the seven business days of the manufacturer's final attempt.

The heart of the Lemon Law is that a point is reached when "enough is enough," and that point is at the final repair opportunity. Further, the real intent of the law is that whatever repairs are necessary must be completed in the seven business-day period, since the only circumstances under which the repair period is extended are when repair services are not available to the consumer as a direct result of a war, invasion, fire, flood or other natural disaster, or as a direct result of a strike. (M.G.L. c.90, §7N 1/2[4].)

THE ARBITRATION PROCESS

Documentation of Defects

Documentation of repair attempts poses one type of credibility issue for arbitrators. Often, consumers may not have complete records or exact repair dates or odometer readings for repairs claimed on their request forms or in testimony at the hearings.

Consumers are not required to have copies of work orders for their arbitration cases, but work orders are one means of substantiating work performed.

Although auto repair services are required by the Attorney General's regulations (940 CMR 5.05(9)) to maintain records of repairs and to provide consumers with copies of work orders--even for warranty repairs--many consumers have a difficult time obtaining these. One consumer who filed for arbitration could not get copies of his work orders despite repeated requests to the dealer and the manufacturer's zone office. After several phone calls and a letter

to the dealer and manufacturer from the LLAP, in addition to a letter from a local consumer group, the consumer received copies of his work orders.

Work orders themselves may become an issue for dispute at a hearing. Many times a consumer will allege complaints about a defect which was never recorded on work orders. A manufacturer may claim that a particular gasket was never replaced, while the consumer testifies that the dealer replaced the gasket but omitted that repair from the work order. Disputes involving work orders are also complicated by the fact that the orders are often illegible.

Manufacturer's "View" of the Vehicle

Early in the program, manufacturers asked for guidelines concerning a manufacturer's right to view a vehicle, prior to an arbitration, for the purpose of preparing its case or determining whether or not the defect exists or is of a substantial nature. The EOCABR issued an advisory opinion defining "view." (See Advisory Opinion #4 in Appendix G.)

A view can be requested under discovery regulations, 201 CMR 11.08, and a consumer must allow a view, but there is no explicit penalty if s/he chooses not to. We have encouraged consumers to comply with discovery requests.

While a view addresses the question of existence or the seriousness of a defect, the view is not a central factor in cases, especially due to the chronic nature of many defects which occur sporadically or only under certain conditions.

Determining Substantial Impairment

To win an arbitration case, a consumer must prove that the defect seriously impairs at least one of the following: use, market value, or safety of the vehicle. If the vehicle has more than one defect, concurrent defects may be considered in combination to determine substantial impairment.

Substantial impairment is decided on a case-by-case basis and must be weighed against the needs of each particular consumer. A problem which constitutes substantial impairment to one consumer may not constitute substantial impairment to another. For example, the defect may be an obnoxious odor. Most people may be able to live relatively easily with the problem; however, for a consumer with a serious respiratory problem, the odor may be so irritable as to substantially impair the vehicle's use and/or safety for that consumer.

The severity of the defect and its effect on the consumer are the focus when determining substantial impairment, not ease of repair. The defect may, in the opinion of the manufacturer, be easily fixed by a competent mechanic at a relatively low cost. The point of the Lemon Law is that a sufficient number of repair opportunities has been given, and the vehicle, if substantially impaired, should be replaced or the consumer's money refunded.

Proving substantial impairment of market value is particularly difficult for consumers. Several consumers with Lemon Law arbitration cases have contacted the EOCABR regarding their difficulty in obtaining written estimates or appraisals for their

vehicles' values or repair costs. Repair services and dealerships are reluctant to become linked to Lemon Law cases and sometimes even refuse to give oral estimates or appraisals.

Determining Business Use

The Lemon Law specifically excludes from its protection auto homes, vehicles built primarily for off-road use, and vehicles used primarily for business purposes (M.G.L. c.90, §7N1/2(1)). The question of business use arises frequently in information submitted with consumers' requests for arbitration forms. The EOCABR has developed internal guidelines for screening possible business use vehicles.

Requests for arbitration are denied on the basis of business use if: 1) The vehicle is owned by or registered to a business; 2) The vehicle is owned by or registered to an individual, but more than 50 percent of the purchase price, depreciation costs, or the operating costs have been or will be deducted from either personal or business income taxes; or no deduction is taken for personal or business tax purposes, but the consumer states the vehicle is used more than 50 percent for business purposes. If none of the above apply, and the consumer states the vehicle is used 50 percent of the time for business use and 50 percent for personal use, the case is accepted, and a "Notice of Special Issues" is sent to the arbitrator, consumer, and manufacturer. This Notice indicates that business use will be an issue of fact to be determined by the arbitrator.

Discovery

Parties involved in arbitration can request information from each other prior to the hearing under a discovery regulation (201 CMR 11.08). The discovery provisions were included in the regulations to encourage communication between parties and settlements. Both consumers and manufacturers have contacted the EOCABR concerning failure of the other party to respond to discovery requests. The office urges parties to respond to discovery requests, but has no subpoena power under the Lemon Law and no authority to order sanctions against those who do not comply with information requests.

A CONSUMER'S ARBITRATION REMEDIES

Replacement/Refund Option

One of the first questions to arise concerned whether it was the consumer's option to choose between a refund or replacement if an arbitrator found in the consumer's favor. Initially, the EOCABR had held that the statute provided the consumer with that option.

The first Lemon Law had given the manufacturer the option of choosing whether the consumer would receive a refund or replacement. The amended statute states "that the consumer shall have an unqualified right to reject a manufacturer's offer of replacement and demand a refund" when a vehicle is returned under the Lemon Law (M.G.L. c.90, §70 1/2[3]).

Manufacturers informally challenged this position in June 1986, and, upon informal consultation with the Department of the Attorney General, the EOCABR determined that the initial interpretation, as

reflected in 201 CMR 11.10(9), was inconsistent with the explicit language of the statute. The EOCABR revised its forms and informational materials and notified consumers who had been accepted through June 25, 1986, that when an arbitrator determines that a vehicle has met the requirements of the Lemon Law, the consumer has the option of rejecting any offer of replacement by the manufacturer and demanding a refund, but if no replacement is offered, the consumer cannot reject a refund and demand a replacement vehicle.

What Constitutes A Replacement Vehicle?

A related question concerns "What constitutes a 'replacement vehicle' under the Lemon Law?" The statute sets out the procedure for computing a refund or replacement. When a refund is issued, a use allowance based on mileage is deducted from the total contract price paid by the consumer. Some manufacturers feel that a consumer should also pay a use allowance when a vehicle is replaced. The statute does not authorize a use allowance in such cases. (See also Advisory Opinion #2 in Appendix G.)

Petition for Removal

In September 1986, Chrysler Motors Corporation attempted to remove one arbitration hearing to Federal District Court. This was of great concern to the EOCABR because a decision to remove the case to Federal District Court would seriously affect the future of the program if manufacturers routinely attempted to remove other cases.

The Consumer Protection Division of the Department of the Attorney General, acting for Secretary Gold, filed a motion to have the case remanded to the Lemon Law Arbitration Program. The court denied Chrysler's petition for removal and a subsequent request for reconsideration. The case was remanded to the arbitration program in January 1987.